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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1826**

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

**Filed May 21, 2018
Affirmed
Randall, Judge***

Crow Wing County District Court
File Nos. 18-JV-16-4572, 18-JV-17-2590

John P. Chitwood, St. Paul, Minnesota (for appellant C.L.M.)

Donald F. Ryan, Crow Wing County Attorney, Angela Jean Frie, Assistant County
Attorney, Brainerd, Minnesota (for respondent Crow Wing County Community Services)

Tina Jay, Baxter, Minnesota (guardian ad litem)

R.L.H., Garrison, Minnesota (pro se respondent)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and Randall,
Judge.

UNPUBLISHED OPINION

RANDALL, Judge

Appellant challenges the district court’s termination of his parental rights, arguing
that the district court erred by proceeding against him by “default” because he was present

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

in court. On this record, the district court simply misused the term “default” in its order. Because it was a harmless error, we affirm.

FACTS

Appellant is the alleged father of a minor child born in 2016. Appellant and the child’s mother have three other minor children together. Appellant and mother have never been married. Their three other children are the subjects of a petition alleging those children to be children in need of protection or services (CHIPS) that was pending when this child was born. That CHIPS petition arose from complaints about the condition of the children’s home, and other neglect issues. When this child was born, she was immediately placed into protective custody with her three siblings. Appellant has not signed a recognition of parentage for the child, and has not registered with the Minnesota Father’s Adoption Registry.

In December 2016, the district court instructed appellant to comply with an out-of-home placement plan. That plan required appellant to abstain from using chemicals, to participate in therapy, and to maintain a safe and stable home. In January 2017, the district court adjudicated the child CHIPS based on the admissions of mother and appellant.

At an Intermediate Disposition Review Hearing (IDRH) in February 2017, the court confirmed appellant had contacted a new therapist and that the new therapist recommended that appellant undergo domestic violence training, which the court instructed appellant to complete. Appellant expressed frustration with the out-of-home placement plan and claimed he had already satisfied all of his obligations. The court directed him to keep complying with the plan. At an IDRH in March 2017, appellant addressed concerns that

his daughter had suffered a burn at her foster home and noted that the assigned case worker had not completed the required visitation hours for the foster home. The court maintained the prior order. In April 2017, mother entered a consent to adoption for her three other minor children. At that IDRH hearing, appellant explained why he had yet to begin domestic violence training, acknowledged that his visitation rights had been suspended because of his inability to control his anger, and admitted that he had yet to engage in anger management training.

On June 23, 2017, respondent Crow Wing County Community Services (the county) filed a Petition to Terminate the Parental Rights of mother and appellant. Mother and appellant each failed to appear for an IDRH set for June 26, 2017. The county noted that appellant had not participated in either therapy or domestic violence training, and, as a result, had not visited his children in quite some time. The county noted that appellant had not signed a recognition of parentage, and requested that appellant submit to genetic tests to establish paternity. The district court granted the county's request, and ordered appellant to submit to genetic tests. At the next IDRH in July 2017, the county renewed its request for appellant to submit to genetic tests, as none had been done. The court again granted this request, and ordered appellant to submit to genetic tests with regard to the child. In September 2017, another IDRH occurred. Because appellant did not attend, the county moved for default. The district court, however, continued the hearing until that afternoon, when appellant did attend. The county noted that it was considering appellant to be an "alleged father," as he still had yet to submit to genetic tests. Appellant's attorney said that appellant would submit to genetic tests if the court absolved him of any child support

obligation.¹ The court declined, and stated that appellant had to choose whether or not he would participate with the court's reunification plan, which included genetic tests.

Mother signed a Parental Consent to Adoption in October 2017. The county then asked the court to find that mother was the sole legal parent of the child, and to terminate the parental rights of any known or unknown fathers. The county further argued that appellant was an alleged father because he failed to submit to genetic tests, did not sign a recognition of parentage, and did not register in the Father's Adoption Registry. Appellant's attorney argued that what the county was functionally seeking was an "involuntary termination of [appellant's] parental rights based on a default when he's sitting right here." The court noted that appellant's claim that he was holding himself out to be the father of the child was thin when it considered the fact that he failed to submit to genetic tests. On October 23, 2017, the district court found that mother was the sole legal parent of the child, and terminated all parental rights of alleged or unknown fathers, including appellant. In its order, the court found that the county requested that the district court rule by "default" against appellant because of his continued failure to submit to genetic tests and his failure to establish parental rights to the child.

Appellant challenges the termination of his parental rights.

D E C I S I O N

I. Default

The district court's order states:

¹ Not a great bargaining ploy.

[The county] requested that the Court move by default against [appellant] because he had yet to complete genetic testing to determine parentage . . . [Appellant's attorney] objected to that request stating that [appellant] was present in the courtroom and that moving by default would bar [appellant] of any defense to the Permanency Petition After consideration of both arguments, the Court moved by default against [appellant] because of his continued failure to submit to genetic testing resulting in failing to establish parentage with regards to [the child].

On appeal, appellant argues that because he and his attorney were present in the court room, the district court erroneously granted the county's motion to proceed by default.

Generally, in juvenile protection matters, if a parent receives proper notice but “fails to appear” for a hearing or trial, “the [district] court may receive evidence in support of the petition or reschedule the hearing.” Minn. R. Juv. Prot. P. 18.01. “When used to designate the act of any person with reference to an action pending, the word ‘appear’ means to come into court as a party to the suit.” *Schroder v. Lahrman*, 26 Minn. 87, 88, 1 N.W. 801, 802 (1879). When a juvenile protection matter proceeds despite the lack of an appearance by a parent, “[i]f the petition is proved by the applicable standard of proof, the court may enter an order granting the relief sought in the petition as to that parent” Minn. R. Juv. Prot. P. 18.02; *see also In re Children of Coats*, 633 N.W.2d 505 (Minn. 2001) (addressing vacation of a termination of parental rights by default).

It is undisputed that appellant both was present with counsel at the October hearing, and appeared on numerous prior occasions in this case. Appellant did not fail to “appear.”

Further, the record shows that the county never sought a default termination of appellant's parental rights at the October hearing generating the termination of appellant's

parental rights. Appellate courts review findings of fact for clear error. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 322 (Minn. App. 2015), *review denied* (Minn. July 21, 2015). A finding is clearly erroneous if “the review of the entire record leaves the court with the definite and firm conviction that a mistake has been made.” *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998) (quotation omitted). This record shows that the county did not file a motion seeking a default termination of appellant’s parental rights. It also shows that, at the October 2017 hearing, the county asked the district court to terminate the parental rights of all known and unknown fathers in light of mother’s signing of a Parental Consent to Adoption for the child. In doing so, the county argued that appellant did not have a legal relationship with the child because he had neither submitted to genetic tests nor otherwise satisfied any of the statutory criteria for creating a legal parent-child relationship; the county did not mention the word “default,” and cited neither rule 18.01 nor rule 18.02. On this record, the district court’s finding that the county sought to proceed by default is erroneous.

The transcript of the October 2017 hearing shows that appellant’s attorney used the word “default,” but did so only when asserting that what the county was “effectively” seeking was a default termination of appellant’s parental rights. In doing so, appellant was both holding himself out to be the child’s father *and actually in the courtroom*. We agree it was not a true default.

In terminating appellant’s parental rights, the district court did not use the analysis associated with a default under rules 18.01 and 18.02. The district court addressed neither

whether appellant had adequate notice of the proceedings nor whether appellant appeared in the case. See Minn. R. Juv. Prot. P. 18.01-.02; *Schroder*, 26 Minn. at 88, 1 N.W. at 802.

Appellant was present at the hearing and the county did not move the district court to terminate appellant's parental rights by default. The only use of the term "default" was to argue that this case did *not* involve a default. We conclude the district court misused the term "default." But it was a harmless error.

II. Prejudice

To obtain relief on appeal, an appellant must show both error by the district court and prejudice arising from that error. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975); see *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 166 (Minn. App. 2005) (citing this aspect of *Midway* in a termination of rights appeal). Thus, the question here becomes whether the district court's unconventional use of "default" prejudiced appellant. See *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 98 (Minn. App. 2008) (refusing to reverse a termination of parental rights for harmless error); *In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (same). Appellant's brief, however, lacks a challenge to the substantive basis for the termination of his parental rights. Questions that are inadequately briefed are not properly before an appellate court. See *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an issue absent adequate briefing); see *J.B.*, 698 N.W.2d at 166 (citing this aspect of *Wintz* in a termination of parental rights appeal). Thus, whether the district court erred in its substantive analysis terminating appellant's parental rights is

not properly before this court, and we need not address the point. In the interests of completeness, however, we will do so briefly.

The gravamen of appellant's default-based argument is that he was not given an adequate right to participate in the proceedings. The rules distinguish between those who are "parties" to juvenile protection matters and those who are "participants." *Compare* Minn. R. Juv. Prot. P. 21.01-.03 (parties) *with* Minn. R. Juv. Prot. P. 22.01-.03 (participants). The district court terminated the parental rights "of all alleged or unknown fathers, including [appellant.]" An "alleged father" is a participant in a juvenile protection matter, but not a party. *Compare* Minn. R. Juv. Prot. P. 22.01(b) (stating that "participant" status is conferred on "any" alleged father) *with* Minn. R. Juv. Prot. P. 21.01, subds. 1, 3 (listing those who are "parties" to juvenile protection matters generally, and others who are given party status in proceedings to terminate parental rights, respectively); *see* Minn. R. Juv. Prot. P. 2.01(3) (defining an "alleged father" as "an individual claimed by a party or participant to be the biological father of a child").

An alleged father may establish a cognizable parent-child relationship in a number of ways, including by genetic testing showing paternity. Minn. Stat. § 260C.007, subd. 25(b)(vi) (2016). If an alleged father obtains a positive genetic match to a child, the court may adjudicate that man as the child's father. *Id.* Appellant was ordered a number of times to undergo genetic testing to show paternity, but he failed to do so. Appellant also failed to establish a parent-child relationship under any of the other statutory grounds, including signing a recognition of parentage. *See* Minn. Stat. § 260C.007, subd. 25(b)(2)(i-vii).

Appellant remained merely an “alleged father” at all stages of this proceeding. And alleged fathers are participants, not parties. Minn. R. Juv. Prot. P. 22.01(b).

The rights of participants to juvenile protection cases are limited to notice and a copy of the petition under Minn. R. Juv. Prot. P. 32, the ability to attend hearings under Minn. R. Juv. Prot. P. 27, and, with an exception not relevant here, the offering of information at the discretion of the district court. Minn. R. Juv. Prot. P. 22.02, subd. 1. The record shows that appellant was afforded these rights in this proceeding. Appellant was afforded an adequate opportunity to participate in these proceedings.

III. Standing

Based on an unpublished opinion of this court, the county asserts that appellant lacks standing to take this appeal. Unpublished opinions can be persuasive, but are not precedential. Minn. Stat. § 480A.08, subd. 3 (2016). The unpublished opinion cited by the county is distinguishable both factually and legally. Generally, a final order in a juvenile protection matter may be appealed by an “aggrieved person” whose substantial rights are impacted by the decision. Minn. R. Juv. Prot. P. 47.02, subd. 1. An aggrieved person is one who will experience an injury that is “immediate, and not a possible, remote consequence.” *In re Custody of D.T.R.*, 796 N.W.2d 509, 513 (Minn. 2011) (citation omitted). The crux of the county’s argument is that, because appellant lacked an established father-child relationship, he was not aggrieved by the termination of his unestablished parental rights, and therefore cannot appeal the termination of those unestablished rights. We disagree. The termination of appellant’s parental rights means that appellant lost not only any unestablished parental rights he may have had, but that he

also lost the ability to even seek to establish those rights. Because of the important and fundamental nature of parental rights, this appellant had standing to take this appeal.²

Affirmed.

² While not addressed by the parties, we find this case distinguishable from *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669 (Minn. 2008). There, despite having executed a recognition of parentage, a father was not named as a party in a petition to terminate parental rights. On appeal from a termination of the father's parental rights, the supreme court ruled that "a parent's parental rights cannot be terminated in the absence of a petition naming the *parent* as a party to the proceedings." *Id.* at 674 (emphasis added). Here, father's failure to establish a father-child relationship means that, legally, he is not a parent of this child.