

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1739**

In the Matter of the Welfare of the Child of J. R. R., Parent.

**Filed April 13, 2020  
Reversed and remanded  
Larkin, Judge**

Hennepin County District Court  
File No. 27-JV-19-3192

Mary F. Moriarty, Fourth District Public Defender, David W. Merchant, Assistant Public Defender, Minneapolis, Minnesota (for appellant-child M.R.)

Michael O. Freeman, Hennepin County Attorney, Mary M. Lynch, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Mary A. Torkildson, Hennepin County Adult Representation Services, Minneapolis, Minnesota (for respondent-mother J.R.R.)

Thomas J. Nolan, Jr., Nolan Law Offices, Minneapolis, Minnesota (for guardian ad litem Nancy Lange)

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

**S Y L L A B U S**

1. If a district court orders a voluntary termination of parental rights under Minn. Stat. § 260C.301, subd. 1(a) (2018), it must make a determination regarding the child's best interests based on a balancing of the best-interests factors listed in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii), even if the termination petition is resolved without a trial.

2. A record inadequate to determine a child's best interests is also inadequate to determine whether good cause exists for a parent to voluntarily terminate parental rights.

## **O P I N I O N**

**LARKIN**, Judge

This is an appeal by a now 16-year-old child from the district court's grant of his mother's request to voluntarily terminate her parental rights to that child. The child argues that the district court failed to timely appoint counsel for him, deprived him of his right to attend and participate in hearings, and failed to make adequate findings of fact to support the termination. The child also argues that the record does not support the termination of mother's parental rights. We have concerns regarding several aspects of this case. Two justify reversal. First, neither the district court's findings of fact nor the record support the district court's grant of mother's request to voluntarily terminate her parental rights. Second, the child's right to attend and participate in the termination hearings was not honored. We therefore reverse and remand.

## **F A C T S**

Respondent J.R.R. is the mother of appellant M.R. (the child), born in 2004, as well as the child's siblings. The child is not enrolled as a member of an Indian tribe, and is not eligible for membership in any Indian tribe. In February 2019, respondent Hennepin County Human Services and Public Health Department (the county) received a report alleging that mother failed to provide shelter for the child by refusing to pick him up from the hospital after the two allegedly had an altercation. Mother stated that the child could not return to her home and that she wanted to terminate her parental rights to the child.

On February 22, 2019, the county petitioned the district court to adjudicate the child to be in need of protection or services (CHIPS). That day, at an emergency-protective-care hearing, the district court placed the child in the county's custody. Present at the hearing were mother and her attorney, an attorney for the county, and someone from the guardian ad litem (GAL) program identified as a "coverage" GAL.<sup>1</sup> Neither the child nor an attorney representing the child were at the hearing.

At the hearing, mother's attorney stated that mother was "prepared to make a CHIPS admission," with the "expectation that the case moves forward towards permanency" because mother was "open to" exploring a voluntary termination of her parental rights to the child. The district court stated that it would appoint a GAL for the child.

The district court, by order filed March 14, 2019, adjudicated the child CHIPS. Additional hearings in the CHIPS case occurred on May 1, 2019, and July 8, 2019. While a "coverage" or "covering" GAL attended each of these hearings, a GAL specifically appointed for the child attended neither hearing. Similarly, counsel for the child attended neither hearing. At the July 8, 2019 hearing, mother's attorney stated that mother wanted to move to Texas and that "the only thing" keeping her in Minnesota was the juvenile-protection case. At that hearing, the district court, per mother's request, directed the county

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<sup>1</sup> At other hearings, the record refers to a "covering" GAL. The record does not explain what a "coverage" or "covering" GAL is. Nor does it identify the duties and authority of a "coverage" or "covering" GAL. Further, the terms "coverage" and "covering" GAL are not found in the statutes, rules, and caselaw regarding GALs in child-protection proceedings. The record shows, however, that a "coverage" GAL is *not* a GAL appointed for the child.

to “move forward with permanency forthwith” and scheduled a hearing for August 16, 2019, on the expected permanency petition.

After the July 8, 2019 hearing, the attorney for the county “tracked down” a public defender, “asked [the public defender] if she could represent the child,” and the public defender met with the child. On July 23, 2019, five months after the district court announced from the bench that it would appoint a GAL for the child, and four months after the district court adjudicated the child CHIPS, the district court signed an order appointing a GAL for the child.

On July 31, 2019, the county petitioned to terminate mother’s parental rights. The termination-of-parental-rights (TPR) petition alleged that mother neglected the child because she refused to pick him up from the hospital and refused to let him return home. The petition asserted that termination was in the child’s best interests because (1) returning the child to his mother or father was “not possible within the foreseeable future,” (2) the child “would be free to be adopted,” (3) the child’s “need for permanency and other interests outweigh the interests of either parent or child in continuing the parent-child relationship,” and (4) “[t]ermination of [mother’s] parental rights and adoption [of the child] is the preferred permanency option for a child that cannot return home.” The petition asked the district court to terminate mother’s parental rights both voluntarily under Minn. Stat. § 260C.301, subd. 1(a), and involuntarily under Minn. Stat. § 260C.301, subd. 1(b) (2018).

On August 16, 2019, the district court held an admit/deny hearing on the TPR petition. Mother, mother’s attorney, and the attorney for the county attended. The child’s

attorney and his GAL believed that the hearing was set for August 21, 2019, and therefore did not attend the hearing on August 16, 2019. The child also did not attend. At the hearing, the county reported that it had “a settlement . . . [for] which [mother] ha[d] voluntarily executed the paperwork.” Mother’s attorney confirmed that a settlement had been reached, noting that mother had executed an affidavit of voluntary termination of her parental rights.

Under Minn. Stat. § 260C.301, subd. 1(a), a district court must find “good cause” to grant a parent’s request to voluntarily terminate that parent’s parental rights. Mother’s affidavit consolidates its discussion of “good cause” and the child’s best interests. The sum total of that discussion states, “I believe that it is in the best interest of my child . . . that I voluntarily consent to terminate my parental rights and that there is good cause to do so.”

At the hearing, after being sworn in, mother waived her trial rights and entered an admission to the TPR petition. The following exchange occurred between mother and her attorney regarding the child’s best interests and the existence of good cause to voluntarily terminate mother’s parental rights:

Q: And you believe that this is what is in the best interest of both you and your son, because you cannot keep him under control, you don’t have the tools to keep him in your home and provide parenting for him safely, because he’s not under your control; is that correct?

A: Yes.

Q: And that would be good cause for you to voluntarily terminate your rights, correct?

A: Yes.

Mother's attorney stated that the child's GAL was absent because of confusion about the hearing date, and both the attorney for the county and mother's attorney asked the district court to leave the record open to allow input from the child's attorney and the child's GAL. The district court agreed to do so.

On September 3, 2019, the district court held a second hearing in the TPR case. The attorney for the county, mother's attorney, mother, the child's attorney, and the child's GAL were present, but not the child. The district court explained that, although mother executed a "voluntary termination" at the August 16, 2019 hearing, the court had left the record open for input from the child's attorney and the GAL.

The county asserted that termination of mother's parental rights was in the child's best interests, noting that the child had been in out-of-home placement since February and that mother had not engaged in a case plan. The county also asserted that other permanency options were not appropriate. Specifically, the county argued that permanent custody to the county was improper because the child was then under age 16 and that temporary custody to the county was improper because that disposition required the sole basis for the transfer to be the child's conduct, which was not the case because mother wanted to terminate her parental rights. The county asked that mother's request to voluntarily terminate her parental rights "remain," and mother's attorney asserted that termination was legally sound and "should stand."

The child's attorney objected to the "termination," noting that the child was not at the August hearing, that the district court had moved forward to allow mother to move to Texas but that mother no longer intended to do so, and that, after meeting with the child, it

was clear that the child “in no way” wanted the district court to terminate mother’s parental rights. The child’s attorney requested that the district court “not allow that termination to go forward” and that “this case run its course as other cases do so that [the district] court [could] be more informed about [the situations of the child and his mother].”

The child’s GAL, who had yet to submit a written report to the court, expressed similar concerns about proceeding, stating that she did not receive the permanency petition until after the admit/deny hearing on August 16, 2019. She said that she had met with the child twice and that she did not believe it was in his best interests for mother to voluntarily terminate her parental rights. The GAL noted that it was “rare in [her] experience that a mother gets to decide that she doesn’t want one of her children.” Like the child’s attorney, the GAL noted that one reason the case had moved quickly was because of the now-stale idea that mother would move to Texas.

The district court explained that, because it had not heard from the child’s attorney and the GAL at the August 16, 2019 hearing, “nothing [had] been ordered for any purpose,” and told the parties that it would take the matter under advisement.

On September 20, 2019, the district court issued an order terminating mother’s parental rights. The order acknowledged that the child’s attorney and the GAL were not present for the August 16, 2019 hearing. It found that, “given the current situation, it is in the child’s best interests to allow [mother] to terminate her parental rights.” In its conclusions of law, the district court ruled that the statutory grounds for an *involuntary* termination of mother’s parental rights were met under Minn. Stat. § 260C.301, subd. 1(b)(1), (2), because mother abandoned the child and failed to satisfy the duties of the

parent-child relationship. The district court ruled that termination was in the child's best interests because mother "consistently expressed her desire to terminate her parental rights" and "refused to work towards reunification." The district court also stated that "[t]he best thing for the child at this point is to provide stability with a care provider who is willing to be there long term for the child," which cannot happen "without first allowing [mother] to terminate her rights." The district court ordered that "[a]ny and all parental rights of [mother] to [the child] . . . are *voluntarily* terminated." (Emphasis added.)

On September 26, 2019, the child's attorney filed, in the CHIPS file, a motion to vacate the order terminating mother's parental rights. The county filed a response in the TPR file, and the district court, by order filed in both the CHIPS and TPR files on October 10, 2019, summarily denied the motion. The child appeals.

## ISSUES

I. If there is no trial on a petition to voluntarily terminate a parent's parental rights, must the district court make a determination regarding the child's best interests based on a balancing of the best-interests factors listed in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii)?

II. Does the record support the district court's voluntary termination of mother's parental rights?

III. Was the child denied his right to attend and participate in the hearings in this case?

IV. Was the child deprived of his right to counsel and notice of his right to counsel?

V. Is the GAL an appellant or respondent in this appeal?

## ANALYSIS

To voluntarily terminate a parent’s parental rights, the district court must have “the written consent of a parent who for good cause desires to terminate parental rights.” Minn. Stat. § 260C.301, subd. 1(a). If a district court finds that the conditions for a voluntary termination of parental rights exist, “the best interests of the child must be the paramount consideration [of the district court].” Minn. Stat. § 260C.301, subd. 7 (2018).

On appeal from a district court’s termination of parental rights, appellate courts review whether the district court’s findings “address the statutory criteria [for the termination of parental rights], whether those findings are supported by substantial evidence, and whether they are clearly erroneous.” *In re Welfare of D.D.G.*, 558 N.W.2d 481, 484 (Minn. 1997); *see In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (applying this standard on appeal from an involuntary TPR). A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or is not reasonably supported by the evidence as a whole. *In re Welfare of S.R.K.*, 911 N.W.2d 821, 830 (Minn. 2018).

### I.

The district court’s determinations that the child “is not eligible for membership in any Indian Tribe” and that “the Indian Child Welfare Act does not apply” to this child are not challenged on appeal. After a trial on a petition to terminate parental rights to a “Non-Indian Child,” the district court “shall make a specific finding that termination is in the best interests of the child” and “shall analyze” three factors: “the child’s interests in preserving

the parent child relationship;” “the parent’s interests in preserving the parent-child relationship;” and “any competing interests of the child.” Minn. R. Juv. Prot. P. 58.04(c)(2)(ii); *see* Minn. R. Juv. Prot. P. 58.04(a), (b) (requiring a decision “[w]ithin 15 days of the conclusion of the testimony” and addressing permanency dispositions after “trial,” respectively);<sup>2</sup> *see also In re Welfare of Children of D.M.T.-R.*, 802 N.W.2d 759, 766 (Minn. App. 2011) (applying this three-part test in an involuntary TPR case). The child challenges the order voluntarily terminating mother’s parental rights, asserting that the order lacks findings balancing the factors listed in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). The county responds that, because there was no trial in this case, particularized findings on the best-interests balancing test are not required. The county’s assertion is inconsistent with procedural rules, statutes, and caselaw. Therefore, we reject it.

Under the rules, if the district court accepts a settlement of a TPR case, “it shall proceed pursuant to . . . Rule 58.04.” Minn. R. Juv. Prot. P. 19.01. Thus, whether a TPR case is tried or settled, rule 58.04 and its balancing test applies. The county’s narrow reading of rule 58.04 is inconsistent with the plain language of rule 19.01.

Additionally, the statutes are clear both that Minn. Stat. § 260C.301, subd. 1(a), governs proceedings to voluntarily terminate parental rights, and that “[i]n any proceeding under [Minn. Stat. § 260C.301], the best interests of the child must be the paramount

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<sup>2</sup> The Minnesota Rules of Juvenile Protection Procedure were amended effective September 1, 2019, and the amended rules apply to proceedings pending on or filed after that date. *Order Promulgating Amendments to the Rules of Juvenile Protection Procedure and the Rules of Adoption Procedure*, Nos. ADM10-8040 & ADM10-8041 (Minn. May 13, 2019). Because this proceeding was pending on September 1, 2019, we cite the amended rules.

consideration.” Minn. Stat. § 260C.301, subd. 7. The statutes also provide that “[i]n making a permanency disposition order or termination of parental rights, 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.511(b) (2018). Given these statutory mandates that a child’s best interest must be the paramount consideration in any proceeding to terminate parental rights and that the district court’s permanency determination must be governed by the best interests of the child, we fail to discern why a lesser degree of consideration of those paramount and governing interests could be justified based on the parties’ decision to settle a termination case without a trial.

Further, the paramount nature of a child’s best interests is recognized in caselaw too voluminous to catalogue and too historic to dispute. *See, e.g., In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137-38 (Minn. 2014); *In re Welfare of J.J.B.*, 390 N.W.2d 274, 279 (Minn. 1986); *State ex rel. Flint v. Flint*, 65 N.W. 272, 272-73, (Minn. 1895). Moreover, as this court has noted:

[P]arental rights are not absolute, and they should not be unduly exalted and enforced to the detriment of the child’s welfare and happiness. The right of parentage is in the nature of a trust and is subject to parents’ correlative duty to protect and care for the child. Moreover, in terminating parental rights, the best interests of the child are the paramount consideration, and conflicts between the rights of the child and rights of the parents are resolved in favor of the child.

*In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 902 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. Jan. 6, 2012). Against this background, the necessity of detailed findings addressing a child’s best interests is unambiguously clear.

In sum, if a district court orders a voluntary termination of parental rights, it must make a determination regarding the child’s best interests based on the best-interests factors listed in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii), even if the termination petition is resolved without a trial.

## II.

The child challenges both the district court’s best-interests findings and the adequacy of its consideration of whether there was good cause for mother to voluntarily terminate her parental rights.

### *Best Interests*

“The ‘best interests of the child’ means all relevant factors to be considered and evaluated.” Minn. Stat. § 260C.511(a) (2018). In its order, the district court addressed the child’s best interests, stating:

[T]he Court finds that termination is in the best interests of the child. In this case, the child has been in out-of-home placement since February of 2019. However, the child has been in out-of-home placement on and off since June of 2017. [Mother] has consistently expressed her desire to terminate her parental rights to this child and has refused to work towards reunification. The best thing for the child at this point is to provide stability with a care provider who is willing to be there long term for the child. That cannot happen without first allowing [mother] to terminate her rights.

In a proceeding to terminate parental rights, a district court's best-interests analysis is reviewed for an abuse of discretion. *In re Welfare of Child of K.L.W.*, 924 N.W.2d 649, 656 (Minn. App. 2019), *review denied* (Minn. Mar. 8, 2019). Here, for four reasons, we conclude that the district court's best-interests analysis is inadequate to support its voluntary termination of mother's parental rights.

First, the district court's analysis does not specifically address the child's interest in preserving the parent-child relationship. To the extent the district court's analysis could be construed to implicitly address that question, it addresses neither the statement by the child's attorney that the child "in no way" wanted mother's parental rights terminated nor the multiple statements by the GAL that it is not in the child's best interests to terminate mother's parental rights. The custodial wishes of a 15-year-old child are a relevant factor to be considered and evaluated. *Cf. Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991) (noting that, in the context of a custody dispute, "[t]he choice of an older teenage child is an overwhelming consideration in determining the child's custody"). Similarly, the input of a GAL is also a relevant factor to be considered. *See* Minn. Stat. § 260C.163, subd. 5(b)(1) (2018) (stating that a GAL's responsibilities include conducting "an independent investigation to determine the facts relevant to the situation of the child and the family"). Neither is addressed here.

"[T]he absence of district court findings on the child's best interests in a TPR proceeding precludes effective appellate review" because we cannot review a district court's assessment of those best interests. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 547 (Minn. App. 2009); *see In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)

(noting that a child's best interests are "generally not susceptible to an appellate court's global review of a record"); see generally *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976) (noting, on appeal of a custody award, that findings of fact explaining a district court's exercise of its discretion are necessary to "(1) assure consideration of the statutory factors by the [district] court; (2) facilitate appellate review of the [district] court's custody decision; and (3) satisfy the parties that this important decision was carefully and fairly considered by the [district] court").

Second, this record contains very limited information actually addressing the child's best interests. Mother's testimony on the subject at the August 16, 2019 hearing was limited to her one-word agreement to her attorney's conclusory assertion that termination was in the child's best interests "because you cannot keep [the child] under control, you don't have the tools to keep him in your home and provide parenting for him safely, because he's not under your control." Mother's affidavit supporting her request to voluntarily terminate her parental rights was even more conclusory, simply stating: "I believe that it is in the best interest of my child . . . that I voluntarily consent to terminate my parental rights and that there is good cause to do so."

Third, mother's conclusory assertions are not illuminated by the rest of the TPR file. The file is devoid of evidence regarding the child's needs, the child's behavior, what appears to have been a conflict between mother and the child, the efforts—if any—mother made to try to manage the child's behavior, whether those efforts—if any—were successful, and if not, why not. In short, the TPR file simply lacks *any* identification of

the historical facts necessary to allow an informed decision regarding whether termination of mother's parental rights was in the child's best interests.

Fourth, the dearth of evidence in the file was not corrected at the September 3, 2019 hearing. There, the child's attorney did not offer any evidence, instead stating: "My understanding of the reason for this hearing today was to address the fact that there was an ex parte proceeding [on August 16, 2019] that neither I was present at [n]or [the GAL]. And this court should not in any way entertain any motion to keep that termination in place." The child's attorney also asked the district court to "vacate whatever happened at the last hearing" because "we need to take a step back here and look at this in a way that would be—in what would be in [the child's] best interest." Thus, the child's attorney did not present any evidence at the September 3, 2019 hearing and, instead, was focused on undoing the events of the August 16, 2019 hearing.

While the GAL briefly addressed the child's best interests at the September 3, 2019 hearing, the GAL admitted that (a) she had not received the TPR petition until after the August 16, 2019 hearing; (b) she had met with the child only twice; (c) she had never even met or spoken with mother; (d) the information she did have about the relationship between mother and the child included the fact that, despite the termination proceeding, mother was "contemplating going to [the child's] football [event], so clearly there is a relationship"; and (e) she did not understand why mother's other children had been omitted from the CHIPS petition.

The GAL's less-than-complete best-interests analysis is understandable given that she had been appointed only recently and had to make her presentation to the court

approximately two-and-a-half weeks after receiving a copy of the petition to terminate mother's parental rights. The GAL's opportunity to develop the information necessary to provide the district court with a fulsome best-interests analysis was compromised. In sum, the inadequately developed record regarding the child's best interests does not support a determination that termination is, in fact, in the child's best interests.

### *Good Cause*

In a proceeding to terminate parental rights, the district court "shall refuse to accept an admission unless there is a factual basis for the admission." Minn. R. Juv. Prot. P. 56.03, subd. 4. The child correctly notes that the district court did not address whether good cause existed under Minn. Stat. § 260C.301, subd. 1(a), for mother to voluntarily terminate her parental rights. In a proceeding to voluntarily terminate parental rights, errors regarding good cause can be ignored if the error is harmless. *See In re Welfare of J.M.S.*, 268 N.W.2d 424, 427-28 (Minn. 1978) (affirming a voluntary TPR despite a district court's errors in obtaining evidence of good cause when those errors were corrected at a later hearing). Here, the failure to address the existence of good cause was not harmless.

While there is no statutory definition of "good cause" for purposes of a voluntary termination of parental rights, a factual basis for good cause "center[s] on the child's best interests." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 86 (Minn. App. 2012); *see In re Child of A.S.*, 698 N.W.2d 190, 195 (Minn. App. 2005) (noting that "good cause for voluntary termination [of parental rights] exists under a variety of circumstances usually related to the best interests of the child"), *review denied* (Minn. Sept. 20, 2005). Because the record is inadequate to address the child's best interests, it is also inadequate to address

whether there was good cause for mother to voluntarily terminate her parental rights. Thus, the district court should not have accepted mother's admission or terminated her parental rights.

### III.

"A child who is the subject of a petition [to terminate parental rights] . . . ha[s] the right to participate in all proceedings on a petition, including the opportunity to personally attend all hearings." Minn. Stat. § 260C.163, subd. 2(a) (2018). The child asserts that he was denied this right.<sup>3</sup> The August 16, 2019 hearing was an admit/deny hearing on the TPR petition. At an admit/deny hearing in a TPR case, "[a]ny party has the right to object to an admission or to contest the basis of a petition." Minn. R. Juv. Prot. P. 56.01, subd. 3. The GAL is a party to the TPR proceeding. Minn. R. Juv. Prot. P. 32.01, subd. 1(a).

The child's attorney and the GAL, apparently based on communications with the county, mistakenly believed that the admit/deny hearing that occurred on August 16, 2019, was actually scheduled for August 21, 2019. Thus, they were understandably absent from the hearing on August 16, 2019. As a result, the child was not afforded his right to attend and participate in the August 16, 2019 hearing, and the GAL was not afforded her right to contest mother's consent to the voluntary termination of her parental rights at that hearing.

The district court kept the record open for the child's attorney and the GAL to address mother's consent, stating that it would set the matter "for a continued admit/deny

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<sup>3</sup> Often, the arguments in the child's brief fail to distinguish between the TPR case and the separate, underlying, CHIPS case. No appeal was taken in the CHIPS case, and we therefore do not address that proceeding.

[hearing].” We understand the district court to have functionally bifurcated the admit/deny hearing into the August 16, 2019 hearing, which addressed the positions of mother and the county, and the September 3, 2019 hearing attended by the child’s attorney and the GAL. Although the child’s attorney and the GAL attended the hearing on September 3, 2019, for reasons that the record does not address, the child did not.

On this record, we cannot say that the child’s right to attend and participate in the continued admit/deny hearing was vindicated at the September 3, 2019 hearing. Similarly, given the late appointment of the GAL, and the even later provision to the GAL of the permanency petition, we cannot say that the GAL was afforded a reasonable opportunity to investigate the case and to contest mother’s admission on the child’s behalf.

#### **IV.**

A termination of parental rights “shall be made only after a hearing before the court, in the manner provided in section 260C.163.” Minn. Stat. § 260C.307, subd. 2 (2018). Subject to certain exceptions not applicable here, a child age ten or older is entitled to effective assistance of court-appointed counsel in connection with a proceeding in juvenile court. Minn. Stat. § 260C.163, subd. 3(a), (b) (2018); *see* Minn. R. Juv. Prot. P. 36.02, subd. 1 (“Appointment of counsel for a child who is the subject of a juvenile protection matter shall be pursuant to Minn. Stat. § 260C.163, subd. 3.”). There is an associated right

to notice of the right to counsel under Minn. Stat. § 260C.163, subd. 3(d) (2018), which provides:

In any proceeding where the subject of a petition for a child in need of protection or services<sup>4</sup> is ten years of age or older, the responsible social services agency shall, within 14 days after filing the petition or at the emergency removal hearing under section 260C.178, subdivision 1, if the child is present, fully and effectively inform the child of the child's right to be represented by appointed counsel upon request and shall notify the court as to whether the child desired counsel. Information provided to the child shall include, at a minimum, the fact that counsel will be provided without charge to the child, that the child's communications with counsel are confidential, and that the child has the right to participate in all proceedings on a petition, including the opportunity to personally attend all hearings.

The child argues that he was denied his statutory right to counsel and notice of that right. Because we reverse the termination order on other grounds, we do not analyze those arguments. However, we note that the record indicates that the child had counsel available to him since July 8, 2019, which was during the CHIPS case, and more than three weeks before the county filed its TPR petition on July 31, 2019. We express no opinion regarding

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<sup>4</sup> The introductory portion of Minn. Stat. § 260C.163, subd. 3(d), refers to cases “where the subject of a petition for a child in need of protection or services is ten years of age or older.” The child here was over age ten and the subject of a CHIPS petition. Moreover, because Minn. Stat. § 260C.307, subd. 2, makes the requirements of Minn. Stat. § 260C.163 (2018), applicable to hearings in TPR cases, we understand the notice requirements of Minn. Stat. § 260C.163, subd. 3(d), to apply to TPR cases as well as CHIPS cases. Further, we note that the 2017 amendments to Minn. Stat. § 260C.163, subds. 3, 10 (2016) and Minn. Stat. § 260C.607, subd. 2 (2016), which codified a child's right to effective notice of the right to be represented by counsel, are also known as “McKenna's Law.” See 2017 Minn. Laws ch. 60, §§ 1-4, at 294-97 (amending Minn. Stat. § 260C.163, subds. 3, 10 (2016) and Minn. Stat. § 260C.607, subd. 2 (2016), and identifying those amendments as “McKenna's Law”).

whether this availability of counsel to the child during the TPR proceeding satisfied his statutory rights to effective assistance of counsel and to notice of that right.

## V.

On appeal, the GAL submitted a purported respondent's brief, seeking reversal of the termination of mother's parental rights. "The party appealing shall be known as the appellant . . . and the adverse party as the respondent." Minn. R. Civ. App. P. 143.01. Because the GAL neither appealed nor joined the child's appeal, the GAL is not an appellant. An "adverse party" is "[a]ny party who would be prejudiced by a reversal or modification of an order, award, or judgment." *Larson v. Le Mere*, 18 N.W.2d 696, 698 (Minn. 1945); see *City of Victoria v. County of Carver*, 567 N.W.2d 772, 774 (Minn. App. 1997) (same), *review denied* (Minn. Sept. 18, 1997). Because the GAL's brief seeks reversal of the TPR, the GAL is not prejudiced by our reversal of the TPR. Thus, in addition to not being an appellant, the GAL is not adverse to the child, and is not a respondent for purposes of this appeal. Therefore, we do not address questions raised by the GAL.

## DECISION

The district court erred by voluntarily terminating mother's parental rights without determining the child's best interests based on a balancing of the best-interests factors set forth in Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). Additionally, the record does not adequately address the child's best interests or whether good cause existed to allow mother to voluntarily terminate her parental rights. Further, the record does not show that the child's rights to attend and participate in the hearings addressing the termination of mother's

parental rights were honored. We therefore reverse the voluntary termination of mother's parental rights and remand for further proceedings under the district court's child-protection jurisdiction, if the district court deems such proceedings appropriate. *See* Minn. Stat. § 260C.312 (a) (2018) ("If, after a hearing, the court does not terminate parental rights but determines that the child is in need of protection or services, or that the child is neglected and in foster care, the court may find the child is in need of protection or services or neglected and in foster care and may enter an order in accordance with the provisions of section 260C.201.").

**Reversed and remanded.**