

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1094**

LuAnn Carol Stanius,
Respondent,

Lisa Stanius,
Respondent,

vs.

Jason Bartig,
Appellant.

**Filed April 12, 2021
Affirmed
Frisch, Judge**

St. Louis County District Court
File Nos. 69DU-FA-15-437, 69DU-FA-19-812

LuAnn Stanius, Hermantown, Minnesota (pro se respondent)

Lisa Stanius, Hermantown, Minnesota (pro se respondent)

Jason Bartig, Duluth, Minnesota (pro se appellant)

Considered and decided by Frisch, Presiding Judge; Reilly, Judge; and Florey,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Father challenges the district court's order granting third-party custody of his daughter to her maternal grandmother. He argues that (1) he did not receive proper notice

of the petition for third-party custody and (2) the district court abused its discretion by denying his motion to remove the presiding judge. We affirm.

FACTS

Appellant Jason Bartig is the biological father of K.S., who is currently seven years old. Respondent Lisa Stanius is the mother of K.S. In 2015, father and mother divorced and father was adjudicated as the biological father of K.S. Mother was granted sole legal and sole physical custody of K.S. Respondent LuAnn Carol Stanius is the maternal grandmother of K.S; she has been a stable caregiver and has provided for K.S. even while K.S. was in her mother's care.

In 2019, grandmother filed an ex parte motion for temporary third-party custody and a petition for third-party custody due to concerns about K.S.'s welfare. According to the petition, mother suffers from severe mental illness and experiences frequent hallucinations, greatly impacting her ability to care for K.S. The petition also indicated that father had not been involved in K.S.'s life, had never had parenting time, and was "court ordered unfit."¹

In September 2019, the district court issued an order granting the ex parte motion and setting a temporary-custody hearing for September 27, 2019. On October 21, 2019, the district court filed an order granting grandmother temporary sole physical and sole legal custody. On November 19, 2019, the county sent father notice that child support would be

¹ According to father, grandmother "did not list [him] as [p]arent B or provide him with any notification of the proceedings" in the petition for third-party custody. Father asserts that there are no grounds that would justify him not being listed as "parent B" in the petition. The petition, however, does identify father as "parent B" sporadically.

redirected from mother to grandmother. Father objected to the redirection of support, contending that he was not notified of the temporary transfer of custody. The district court overruled the objection and ordered child support redirected to grandmother.

In April 2020, father filed an emergency ex parte motion to vacate the order granting temporary third-party custody, arguing that he did not receive proper notice under Minn. Stat. § 257C.03 (2020). The district court determined that father had received notice of the petition when he was served with a notice of redirection of child support, approximately three months after grandmother had filed the petition for third-party custody. The district court scheduled an evidentiary hearing to address the written-notice requirement and determine permanent custody.

In June 2020, father filed a motion to remove the assigned judge from the case, alleging bias due to the judge's participation in previous cases between father and mother. The district court denied the motion. The chief judge of the district court denied the motion again on reconsideration, stating that “[n]one of [the] allegations are substantiated in the record before the Court” and “the motion comes after [the assigned judge] issue[d] a temporary order and set an evidentiary hearing.”

At the evidentiary hearing, the district court heard from mother, father, and grandmother. At the hearing, father stated that K.S. should not live with her grandmother and that he should be granted sole legal and sole physical custody despite his lack of participation through the majority of K.S.'s life. The district court acknowledged that grandmother failed to serve father with notice of her petition but that father (1) was notified when the county sought to redirect support payments and (2) waived any service defect by

participating in the proceedings since fall 2019 and failing to address the issue at the evidentiary hearing. The district court awarded sole legal and sole physical custody of K.S. to grandmother, and father was granted supervised parenting time at grandmother's discretion. Father appeals.

DECISION

I. The district court did not abuse its discretion by granting third-party custody of K.S. to her grandmother.

“Appellate review of custody determinations is generally limited to determining whether the district court has abused its discretion. However, the interpretation and construction of statutes are questions of law that [appellate courts] review de novo.” *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006) (citation omitted). “Factual disputes regarding the adequacy of notice are reviewed for clear error.” *Cook v. Arimitsu*, 907 N.W.2d 233, 240 (Minn. App. 2018), *review denied* (Minn. Apr. 17, 2018). Pursuant to Minn. Stat. § 257C.03, subd. 3(a)(1)(v), “written notice of a hearing on a petition to establish de facto or third-party custody of a child must be given” to a person adjudicated to be the child's parent. Father was adjudicated as K.S.'s biological father in 2015, and he was therefore entitled to written notice pursuant to Minn. Stat. § 257C.03, subd. 3(a)(1)(v).

The district court concluded that father was notified of the petition for third-party custody when he was served with the notice of redirection of child support in the parties' other file, approximately three months after grandmother filed the petition for third-party custody in September 2019. The district court stated:

By his own statement, he received notice when St. Louis County moved to redirect child support to grandmother in fall

2019. Since then, he has participated in the hearings and filed documents with the court. Father has waived the issue of service by participating fully since fall 2019 and not readdressing the issue of service at the July 2, 2020 evidentiary hearing. The lack of service has been cured by Father's participation in the July 2, 2020 evidentiary hearing.

Pursuant to *Galbreath v. Coleman*, “a party who takes or consents to any step in a proceeding which assumes that jurisdiction exists or continues has made a general appearance.” 596 N.W.2d 689, 690 (Minn. App. 1999). If a defendant takes an affirmative step to invoke the court's power or recognizes its jurisdiction, then the defendant submits to the court's jurisdiction. *Id.* Father raised the issue of notice in his first filing with the district court, but he continued to participate in all subsequent proceedings without addressing the initial lack of notice at the eventual evidentiary hearing.

The district court acknowledged that grandmother failed to serve father with the statutorily required notice and that three months passed between the time the petition was filed and father became aware of the proceedings. But we see no error by the district court in declining to vacate the order for temporary third-party custody and proceeding to determine permanent custody. Father's participation at the evidentiary hearing without further objection to the absence of notice amounts to consent to and recognition of the district court's jurisdiction, and we therefore decline to reverse the district court's order due to a lack of proper notice.

II. The district court did not abuse its discretion by denying father's motion to remove the district court judge.

A judge is disqualified under the Minnesota Code of Judicial Conduct if “a reasonable examiner, with full knowledge of the facts and circumstances, would question

the judge's impartiality." *In re Jacobs*, 802 N.W.2d 748, 753 (Minn. 2011). A subjective belief that a judge is biased does not necessarily require disqualification. *Rossberg v. State*, 874 N.W.2d 786, 789 (Minn. 2016). Denial of a removal motion is within the district court's discretion and should not be reversed absent a clear abuse of discretion. *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

Father argues that the district court committed reversible error by denying his motion to remove the presiding judge. Father asserted that he has a personal conflict with the presiding judge because the same judge presided over divorce and custody proceedings between father and mother and the child, K.S., respectively, and the outcome was not in father's favor. That the district court judge previously presided over a separate matter involving these parties is not a sufficient basis for removal of a judge. See *In re Welfare of D.L.*, 479 N.W.2d 408, 415 (Minn. App. 1991) (stating that disqualifying bias or prejudice "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from her participation in the case."), *aff'd*, 486 N.W.2d 375 (Minn. 1992). Even so, father's complaints about the presiding judge and allegations of bias are not supported by the record and instead originate from father's disagreement with the judge's rulings in previous matters.

Because the record does not support a finding that the judge has an affirmative bias against father and the record contains no rational basis upon which to question the judge's impartiality, we see no abuse of discretion in the denial of the motion to remove.

Affirmed.