

*This opinion is nonprecedential except as provided by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
A20-1341**

In the Matter of the Welfare of the Child of: V. R. and J. N., Parents.

**Filed April 12, 2021
Reversed and remanded
Florey, Judge**

Kandiyohi County District Court
File No. 34-JV-20-178

Jennifer L. Thompson, JLT Law & Mediation, Litchfield, Minnesota (for appellant-father J.N.)

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent Kandiyohi County Health and Human Services)

John W. Mueller, Mueller Law Office, Litchfield, Minnesota (for respondent-mother V.R.)

Kristi Barber, Willmar, Minnesota (guardian ad litem)

Considered and decided by Frisch, Presiding Judge; Florey, Judge; and John Smith, Judge.*

NONPRECEDENTIAL OPINION

FLOREY, Judge

Respondent-county filed a petition seeking to terminate the parental rights of appellant-father. Father did not appear for a pretrial hearing, and the district court, sua sponte, directed the county to proceed by default. After a short default trial, the district

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

court found that a statutory ground for involuntary termination existed and that it was in the child's best interests to terminate father's parental rights. Father challenges the district court's decision to proceed by default. Considering the unique circumstances of this case, we conclude that the district court abused its discretion in sua sponte proceeding by default and remand for further proceedings.

FACTS

In August 2020, respondent Kandiyohi County filed a petition to terminate the parental rights of appellant-father J.N. and mother V.R. to their child (born in 2019). The petition alleged that father was palpably unfit to be a party to the parent and child relationship. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (2020). Father's parental rights to another child had previously been involuntarily terminated—thus, father was presumed to be palpably unfit. *Id.*

Father was in prison during these proceedings and was scheduled to be released in December 2020. He appeared for the admit/deny hearing on September 1, 2020, via virtual courtroom. He denied the petition. The district court scheduled a pretrial conference for September 30, 2020, and a trial beginning on October 13, 2020.

Father did not appear for the pretrial conference. Father's attorney told the district court that she "had a difficult time getting a hold of" father, who was still confined. But she indicated that she had talked with father and understood his position on the matter. In response, the district court stated that father was aware of the consequences for failing to appear at the pretrial conference and indicated that it would "allow the petition to proceed in default."

The county's attorney told the district court that the parties had reached an agreement to resolve the matter by voluntary termination. But the district court observed that it could not do a voluntary termination when father was not there. The county's attorney responded that he understood, but that "five minutes ago that was how we were hoping to proceed."

The district court then, sua sponte, placed the child's guardian ad litem and the social worker assigned to the case under oath. The county questioned these witnesses, eliciting testimony that father's parental rights had been previously terminated and that it was their opinion that the child's interests were best served by termination of father's parental rights. Near the end of the hearing, the district court judge noted that she had presided over father's previous termination case. Following the hearing, the district court entered an order terminating father's parental rights to the child, finding that the county had proven by clear and convincing evidence that father was palpably unfit to be a party to the parent and child relationship based on the presumption established by father's previous involuntary termination and that it was in the child's best interests to terminate father's parental rights.

Father appeals.

DECISION

Father asserts that the district court erred by sua sponte proceeding by default, making unsupported findings, and violating his right to due process in a number of ways. The county candidly agrees that the district court abused its discretion by proceeding by default under these circumstances. Because we also conclude that the district court abused

its discretion by proceeding by default under these circumstances, we do not reach father's arguments regarding unsupported findings and his right to due process.

In a termination proceeding, there are two ways to proceed if a parent fails to appear for a pretrial hearing: "receive evidence in support of the petition or reschedule the hearing." Minn. R. Juv. Prot. P. 18.01. If the district court proceeds by default and receives evidence in support of the petition, the court may order termination of parental rights if the county proves by clear and convincing evidence that termination is warranted. Minn. R. Juv. Prot. P. 18.02; *see also* Minn. Stat. § 260C.317 (2020) (establishing clear-and-convincing burden of proof). Because the rule provides that the district court "may" proceed by default or reschedule the hearing, we review the district court's decision to proceed by default for an abuse of discretion. Minn. R. Juv. Prot. P. 18.01.

By proceeding by default, the district court necessarily decided not to "reschedule the hearing." Our review of the district court's exercise of discretion is therefore guided by caselaw and rules regarding continuances. The district court may "continue a scheduled hearing or trial to a later date so long as the timelines for achieving permanency as set forth in [the Minnesota Rules of Juvenile Protection Procedure] are not delayed." Minn. R. Juv. Prot. P. 5.01, subd. 1. In considering whether the district court abused its discretion by denying a continuance request, a reviewing court should consider "the circumstances before the [district] court at the time the motion was made." *State v. Turnipseed*, 297 N.W.2d 308, 311 (Minn. 1980); *see also Hamilton v. Hamilton*, 396 N.W.2d 91, 94 (Minn. App. 1986) (noting that the district court "should base its decision [on a continuance request] on the facts and circumstances surrounding the request").

This is a unique case. The district court decided to proceed by default despite the parties' indication that they had reached an agreement that father would voluntarily terminate his parental rights. Father's attorney told the district court that she had some difficulty getting in contact with father in prison, but stated that she had spoken with father and understood his position. While no party requested that the district court reschedule the hearing, the county did not ask that the district court proceed by default.¹ The district court did not ask the parties how they wished to proceed given father's failure to appear. Before sua sponte deciding to proceed by default, the district court did not make any effort to determine whether father's failure to appear was by choice or the result of circumstances beyond his control. Moreover, there is no indication in the record that the district court considered rescheduling the hearing and no explanation for the district court's decision. In short, rather than sua sponte directing the county to proceed by default, the district court should have sought out information about father's failure to appear, asked how the parties wished to proceed, and considered whether it was more appropriate to reschedule the hearing.²

¹ We observe that the district court, in its order terminating father's parental rights, found that the county requested to proceed by default. Both parties agree, and the record reflects, that the district court's finding is clearly erroneous.

² We also observe that, in this case, it was not necessary to proceed by default to maintain the timelines provided by rules. See Minn. R. Juv. Prot. P. 5.01, subd. 1 (allowing continuances so long as the timelines in the rules are met). The district court must proceed to a trial within 60 days of the first admit/deny hearing. Minn. R. Juv. Prot. P. 52.02, subd. 4. The pretrial hearing must occur at least ten days before trial. *Id.*, subd. 3. It was possible to reschedule pretrial hearing but still maintain the timelines provided for in the rule.

Considering the unique circumstances of this case, we conclude that the district court abused its discretion by sua sponte proceeding by default.

Reversed and remanded.