

*This opinion is nonprecedential except as provided by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
A21-0488**

In re the Matter of the Child of:

S. S. N., k/n/a S. S. T. and P. J. H., Parents.

**Filed October 25, 2021
Affirmed
Cochran, Judge**

St. Louis County District Court
File No. 69DU-JV-20-510

Bill L. Thompson, Law Office of Bill L. Thompson, Duluth, Minnesota (for appellant S.S.T.)

Matthew Miller, Duluth, Minnesota (for respondent P.J.H.)

Rhoda Nagorski, Superior, Wisconsin (guardian ad litem)

Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This case involves a petition by appellant-mother to terminate respondent-father's parental rights to the parties' minor child. Father moved to dismiss mother's petition, and the district court granted father's motion. On appeal, mother argues that the district court improperly granted father's motion to dismiss because the motion was untimely. We affirm.

FACTS

Appellant S.S.T. (mother) and respondent P.J.H. (father) were married and had a child together in 2012. The parties divorced in March 2014. Pursuant to the judgment and decree dissolving the marriage, mother was granted sole physical custody of the child, and father was given “reasonable and liberal parenting time.” The parties share joint legal custody. Between May 2014 and November 2020, neither mother nor father sought to amend father’s custody or parenting time in the marital-dissolution case.

In November 2020, mother filed a petition to terminate father’s parental rights to the child. The petition identified three statutory grounds to support termination of father’s parental rights, including that: (1) father had abandoned the child; (2) father had refused to comply with the duties imposed by the parent-child relationship; and (3) father was unable or unwilling to provide the child with necessary food, clothing, shelter, education, or other care. The petition alleged the following facts to support the statutory grounds: father had not provided financial support for the child; father had “chemical dependency issues with both alcohol and drugs”; and father could not care for the child because the child had “special needs.” The petition also alleged that, during discussions with the child’s therapist, the child showed “extremely negative feelings towards his father, and no longer want[ed] to be associated with, or to see his father in the future.” The petition further alleged that mother believed that mental health professionals who had worked with the child would conclude that termination of father’s parental rights was in the child’s best interests.

The district court held an admit/deny hearing in December 2020. Father appeared pro se at that hearing and requested that the court appoint an attorney for him. The district court entered a denial on father's behalf. The district court subsequently appointed counsel to represent father.

At a February 10, 2021 pretrial hearing, father's attorney requested a motion hearing to challenge the sufficiency of the petition. Shortly thereafter, father filed a motion to dismiss the petition. Father's memorandum of law in support of the motion raised two independent grounds for dismissal. First, he argued that the petition failed to make a prima facie case for termination of his parental rights because the petition did not plead facts that, if proved, would support termination of his parental rights. Thus, father argued the petition should be dismissed under Minn. R. Juv. Prot. P. 14.04(c). Second, father argued that the district court should dismiss the petition because it failed to include information required by Minn. R. Juv. Prot. P. 54 and Minn. Stat. § 260C.141, subd. 1(b) (2020), which govern a petition to terminate parental rights. The district court held a hearing on father's motion in March 2021. At the hearing, mother's attorney told the district court that father's prima-facie-case argument "should have been made well prior to a pretrial" hearing and that "[i]t's not definitely something we bring up at a pretrial hearing."

After the motion hearing, the district court granted father's motion to dismiss the petition. The district court granted the motion on two bases. First, the district court determined that dismissal was appropriate under Minn. R. Juv. Prot. P. 14.04(c) because the petition did not make a prima facie case because it failed to allege facts which, if

proven, would allow the district court to terminate father's parental rights under the statutory grounds set forth in the petition.¹

Second, the district court determined that the petition failed to comply with rule 54.03, subd. 2, and Minn. Stat. § 260C.141, subd. 1(b). The district court explained that Minn. R. Juv. Prot. P. 54.03, subd. 2, requires that a petition filed by an individual to terminate another person's parental rights must meet the requirements of Minn. Stat. § 260C.141, subd. 1(b). That statute in turn provides that such a petition must include certain information, which the district court found to be lacking in this case. Specifically, the district court found that the petition failed to include a statement by mother that she had reported the circumstances underlying the petition to the county social services agency as required by the statute. The district court also found that the petition failed to disclose the existing custody order between the parties from the marital-dissolution case—another requirement of the statute. The district court further commented that mother's allegations regarding financial support were more appropriately addressed in the dissolution case, and that father's alleged chemical-dependency issues could be addressed by the county in a proceeding for a child in need of protection or services, if properly brought to the county's

¹ The district court's order says that father brought the motion under rule 15.04(c), rather than rule 14.04(c). The district court appears to have been looking at a previous version of the rule. In 2019, the supreme court promulgated amendments to the rules of juvenile protection procedure, and rule 15.04 was renumbered as rule 14.04. *Order Promulgating Amendments to the Rules of Juvenile Protection Procedure & the Rules of Adoption Procedure*, No. ADM10-8041 (Minn. May 13, 2019); Minn. R. Juv. Prot. P. 14.07 2019 advisory comm. cmt. (noting that rule 14 was previously numbered as rule 15).

attention, as required by the statute. Accordingly, the district court dismissed mother's petition.

Mother appeals.

DECISION

Mother challenges the district court's order granting father's motion to dismiss her petition to terminate parental rights. We review a district court's decision on a motion to dismiss for failure to establish a prima facie case for an abuse of discretion. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 318 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015). The interpretation of the rules of juvenile protection procedure is a legal question, which we review de novo. *In re Welfare of Child of R.K.*, 901 N.W.2d 156, 159 (Minn. 2017).

On appeal, mother does not challenge the substance of the district court's decision. Instead, mother argues only that the district court should have denied father's motion because it was untimely. Rule 14.04 of the Minnesota Rules of Juvenile Protection Procedure governs a motion to dismiss a petition to terminate parental rights. The rule provides that a party or county attorney may bring a motion to dismiss the petition upon any of the following grounds:

- (a) lack of jurisdiction over the subject matter;
- (b) lack of jurisdiction over the child;
- (c) at or prior to the admit/deny hearing, failure of the petition to state facts which, if proven, establish a prima facie case to support the statutory grounds set forth in the petition; or
- (d) any other ground supported by law.

Minn. R. Juv. Prot. P. 14.04. Only the third ground—failure of the petition to establish a prima facie case—is subject to a time limit. *Id.* There is no time limit specified in the rule for bringing a motion based on any of the other listed grounds. *Id.*

Mother’s argument on appeal focuses on rule 14.04(c). Mother argues father’s motion to dismiss was untimely because father brought his motion after the admit/deny hearing occurred. Mother notes that the admit/deny hearing here was held in December 2020, but father did not file the motion, or even mention bringing the motion, until February 2021. Accordingly, mother argues that the district court erred by not dismissing the motion as untimely under rule 14.04(c).

Father responds that this court should not consider mother’s timeliness argument because mother did not raise an objection based on rule 14.04(c) with the district court. Alternatively, father contends that the motion was properly considered by the district court pursuant to rule 14.04(d) because the motion set forth other legal grounds to support dismissal besides the failure to establish a prima facie case. For the reasons set forth below, we agree with father that mother has not demonstrated a basis for reversal.

First, mother’s timeliness argument is not properly before this court. We generally consider only issues that were presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also In re Welfare of Children of M.L.S.*, ___ N.W.2d ___, ___, 2021 WL 2640559, at *7 n.5 (Minn. App. June 28, 2021) (applying *Thiele* in juvenile-protection proceeding). Mother maintains that she argued the timing issue to the district court because, at the motion hearing, her attorney told the district court that father’s motion “should have been made well prior to a pretrial” hearing and that

“[i]t’s not definitely something we bring up at a pretrial hearing.” But the attorney merely made a generalized assertion that father should have brought the argument at an earlier time. Mother did not raise the particular argument that she raises on appeal—that father’s motion was untimely under rule 14.04(c). Mother did not cite the rule or otherwise argue that father’s motion failed to comply with the rules of juvenile protection procedure. Absent some sort of argument from mother that father’s motion was brought outside the time allowed under the applicable rules, the district court did not have the opportunity to address whether it should deny father’s motion as untimely. Because mother failed to present her timeliness argument to the district court and the district court did not consider it, mother has forfeited the argument. *Cf. Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) (holding that a claim was not before district court when “the pleadings were general enough to have possibly made out a claim on that theory, [but] there was no language in the complaint that would alert anyone to a claim” based on that theory).

Second, even assuming mother’s generalized assertion to the district court was sufficient to preserve her timeliness issue for appeal, we conclude that the district court was not required to deny father’s motion to dismiss. Under rule 14.04, only a motion to dismiss based on failure to establish a *prima facie* case must be brought at or prior to the admit/deny hearing. Minn. R. Juv. Prot. P. 14.04. A motion to dismiss based on lack of jurisdiction or on “any other ground supported by law” is *not* subject to that same time limitation. *Id.* Here, father’s motion to dismiss raised, and the district court found, another legal ground to support dismissal of mother’s petition—namely, failure to meet the requirements of Minn. R. Juv. Prot. P. 54.03, subd. 2, and Minn. Stat. § 260C.141,

subd. 1(b). Although neither father's motion to dismiss nor the district court's order specifically cited rule 14.04(d), the district court's dismissal of the petition on the basis of Minn. R. Juv. Prot. P. 54.03 and Minn. Stat. § 260C.141 falls within the scope of rule 14.04(d), as the dismissal was based on "any other ground supported by law." Accordingly, the district court properly considered this alternative legal ground in determining whether to grant father's motion to dismiss.

We further conclude that the district court did not err by granting father's motion to dismiss on the alternate basis of rule 54.03 and Minn. Stat. § 260C.141. As the district court correctly noted, rule 54.03, subd. 2, provides that a petition filed by an individual to terminate another person's parental rights must meet the requirements in Minn. Stat. § 260C.141, subd. 1(b). That statute requires that the petition include, among other things, "a statement that petitioner has reported the circumstances underlying the petition to the responsible social services agency, and protection or services were not provided to the child." Minn. Stat. § 260C.141, subd. 1(b)(2). The petition must also include "a statement whether there are existing juvenile or family court custody orders or pending proceedings in juvenile or family court concerning the child." *Id.*, subd. 1(b)(3). The district court correctly noted that mother's petition did not comply with these requirements. The petition did not allege that mother had reported the circumstances to a social services agency, nor did it disclose the existing custody order in the marital-dissolution case. The district court ultimately dismissed the petition both because of these defects in the petition and because the facts alleged failed to establish a *prima facie* case. We see no abuse of discretion in the district court's determination that the petition's failure to comply with the

applicable requirements of rule 54.03, subd. 2, and Minn. Stat. § 260C.141, subd. 1(b), was an appropriate ground to dismiss the petition.

For these reasons, we conclude that the district court did not abuse its discretion by dismissing mother's petition to terminate father's parental rights.

Affirmed.