

*This opinion is nonprecedential except as provided by  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  
A23-1247**

In the Matter of the Welfare of the Child of: M. A. B., Legal Custodian.

**Filed February 12, 2024  
Reversed and remanded  
Smith, Tracy M., Judge**

Hennepin County District Court  
File No. 27-JV-23-850

Brooke Beskau Warg, Hennepin County Adult Representation Services, Minneapolis, Minnesota (for appellant M.A.B.)

Mary F. Moriarty, Hennepin County Attorney, Britta Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Michael Berger, Fourth District Public Defender, Dean W. Lambrecht, Assistant Public Defender, Minneapolis, Minnesota (for child)

Andrew Lloyd, Minneapolis, Minnesota (guardian ad litem)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and Bratvold, Judge.

**NONPRECEDENTIAL OPINION**

**SMITH, TRACY M., Judge**

Appellant grandmother challenges the district court's involuntary transfer of permanent legal and physical custody of her grandchild from her to the child's aunt. Grandmother argues that the district court should not have proceeded by default at the admit/deny hearing on the transfer petition once her counsel entered a denial on her behalf

in her absence. Because the district court's decision to proceed by default was an error that prejudiced grandmother, we reverse and remand the case for further proceedings.

## FACTS

Appellant M.A.B. is the maternal grandmother of E.R.H., born in 2013. In a family court proceeding in 2017, grandmother was granted sole legal and sole physical custody of E.R.H.<sup>1</sup> In January 2022, respondent Hennepin County Human Services and Public Health Department (the department) filed a petition alleging that E.R.H. was a child in need of protection or services (CHIPS).

In April 2022, the district court ordered placement of E.R.H. in foster care with his maternal aunt. Four months later, the district court entered a CHIPS adjudication and ordered grandmother to comply with a case plan.

On April 7, 2023, about one year after E.R.H. was removed from grandmother's home, the department filed a petition to transfer permanent legal and physical custody of E.R.H. to aunt. On April 18, 2023, the district court held an admit/deny hearing on the transfer petition. Grandmother failed to appear at the hearing. The department requested to proceed by default. Counsel for grandmother objected, arguing that grandmother had received inadequate notice of the hearing because she had not been served at least ten days before the hearing. *See* Minn. R. Juv. Prot. P. 53.02, subd. 3 ("In any permanency . . . matter, the summons and petition shall be served upon all parties in a manner that will allow for completion of service at least 10 days prior to the date set for the admit/deny

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<sup>1</sup> E.R.H.'s mother died in 2016. The parental rights of E.R.H.'s father were terminated in 2019.

hearing.”). The district court found that grandmother had been personally served with notice only five days before the hearing and accordingly denied the department’s request to proceed by default. The district court continued the admit/deny hearing to April 27, 2023.

Grandmother failed to appear at the continued admit/deny hearing. The department made another request to proceed by default. Counsel for grandmother again objected. Counsel asserted that she was “permitted to enter a denial on [grandmother’s] behalf.” Counsel noted that “[t]he last position [grandmother] provided [to her] was clearly that she would not agree to a transfer of custody” and requested that the district court “enter a denial.” The district court granted counsel’s request to enter a denial on grandmother’s behalf. The district court then granted the department’s request to proceed by default and heard testimony on the transfer petition.

Following the default proceeding, the district court granted the transfer petition and ordered that legal and physical custody of E.R.H. be permanently transferred to aunt; but the district court stayed the order pending the approval of aunt’s application for Northstar kinship assistance.<sup>2</sup> The district court revoked the stay on its order after aunt’s Northstar kinship assistance application was approved. Grandmother moved for a new trial. The department opposed the motion but also stated that it did not oppose reopening the matter

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<sup>2</sup> Northstar kinship assistance is a state benefits program available to a child placed in relative foster care who finds permanency with the relative through a transfer of permanent legal and physical custody. *See* Minn. Stat. § 256N.02, subd. 11 (2022) (defining Northstar kinship assistance); *see also* Minn. Stat. § 256N.22 (2022) (addressing Northstar kinship assistance eligibility).

“to correct[] what may be a procedural error.” The district court denied grandmother’s motion.

Grandmother appeals.

## DECISION

Grandmother argues that the district court committed prejudicial error when it proceeded by default. We first address the alleged error and then turn to prejudice.

### **Proceeding by default was a procedural error.**

Under Minnesota Rule of Juvenile Protection Procedure 18.01, a district court may proceed by default when a legal custodian fails to appear for a noticed hearing in a juvenile-protection proceeding unless one of two exceptions applies. The rule states:

*Except as otherwise provided in Rules 47.02, subd. 1 and 56.02, subd. 1, if a parent, legal custodian, or Indian custodian fails to appear for an admit-deny hearing, a pretrial hearing, or a trial after being properly served with a summons pursuant to Rule 44.02 or 53.02, or a notice pursuant to Rule 44.03, 44.04, 53.03, or 53.04, the court may receive evidence in support of the petition or reschedule the hearing.*

Minn. R. Juv. Prot. P. 18.01 (emphasis added).

Only the second exception in rule 18.01 is relevant here. Minnesota Rule of Juvenile Protection Procedure 56.02 provides that, in a permanency matter, “[a] written denial or a denial on the record of the statutory grounds set forth in a petition may be entered by counsel without the personal appearance of the person represented by counsel.” Minn. R. Juv. Prot. P. 56.02, subd. 1. When a denial is entered, “the court *shall* schedule further proceedings pursuant to Rule 57 or Rule 58.” *Id.*, subd. 2 (emphasis added); *see* Minn. R. Juv. P. Prot. P. 57 (pretrial hearing), 58 (trial); *cf.* Minn. Stat. § 645.44, subd. 16 (2022)

(stating that “[s]hall’ is mandatory”). Appellate courts review a district court’s construction and application of juvenile-protection rules de novo. *In re Welfare of Child of R.S.*, 805 N.W.2d 44, 48-49 (Minn. 2011).

Grandmother argues that the district court erred when it proceeded by default at the admit/deny hearing. She argues that, together, rule 18.01 and rule 56.02 plainly provide that the district court may not proceed by default when a legal custodian fails to appear for an admit/deny hearing but the legal custodian’s counsel enters a denial on the custodian’s behalf; instead, the district court must schedule further proceedings, including a pretrial and a trial.

The department does not dispute grandmother’s reading of the rules. Instead, it argues that no violation occurred because grandmother’s purported counsel—who was court-appointed to represent grandmother in the CHIPS matter—had not yet been court-appointed to represent her in the permanency matter and therefore did not have the authority to enter a denial on grandmother’s behalf.

We first address the issue of whether grandmother was represented by counsel. Minnesota Rule of Juvenile Protection Procedure 36 governs the appointment of counsel in a juvenile-protection matter. “Every party and participant has the right to be represented by counsel in every juvenile protection matter” and “[t]his right attaches no later than when the party or participant first appears in court.” Minn. R. Juv. Prot. P. 36.01. Appointment of counsel for a legal custodian is governed by Minnesota Statutes section 260C.163, subdivision 3 (2022). Minn. R. Juv. Prot. P. 36.02, subd. 2. If the legal custodian desires and is eligible for court-appointed counsel, the court must appoint counsel to represent the

legal custodian “prior to the first hearing on the petition and at all stages of the proceedings.” Minn. Stat. § 260C.163, subd. 3(c).

The department asserts that, because grandmother failed to appear at the admit/deny hearing—the first hearing on the transfer petition—“she could not ‘request’ counsel be appointed” in the permanency matter and “her right to counsel . . . never attached.” But the right to representation pursuant to rule 36 attaches “*no later than* when the party or participant first appears in court.” Minn. R. Juv. Prot. P. 36.01 (emphasis added). And the department does not explain why the district court was not required to appoint counsel to represent grandmother before the admit/deny hearing.

Moreover, as grandmother points out, the record demonstrates that grandmother was, in fact, represented by the attorney who appeared on her behalf at the admit/deny hearing. The summons for the admit/deny hearing and the transfer petition were personally served on the attorney. The attorney appeared at the initial admit/deny hearing and represented grandmother’s interests at the hearing. After the hearing, the district court issued an order stating that the attorney had “represented” grandmother at the hearing. The attorney also appeared at the continued admit/deny hearing and represented grandmother’s interests at that hearing. In its order transferring permanent custody, the district court identified the attorney as “counsel” for grandmother. And, in its order denying grandmother’s motion for a new trial, the district court found that it had permitted grandmother’s counsel to enter a denial on her behalf. The department’s argument fails.

Turning back to the rules governing default proceedings, again, the department does not dispute grandmother’s interpretation of rule 18.01 and rule 56.02. And we agree with

grandmother that, under the plain language of the rules, the district court was precluded from proceeding by default once grandmother's counsel entered a denial on her behalf. Grandmother's counsel objected to the district court proceeding by default and requested that the district court enter a denial on grandmother's behalf, stating:

I would object to a finding of default . . . under [rule 56.02, subdivision 1,] of the Minnesota Rules of Juvenile Protection Procedure. As counsel, I am permitted to enter a denial on [grandmother's] behalf. The last position she provided me was clearly that she would not agree to a transfer of custody.

. . . So I am entering the position that I last know her to have, which is not agreeing to the transfer of custody. And at this admit/deny phase, under that rule, I am permitted to enter a denial, so that is what I will do today.

After reviewing rule 56.02, subdivision 1, the district court agreed that grandmother's counsel was "permitted to enter the denial . . . on behalf of her client" and accepted counsel's denial on behalf of grandmother. The district court nevertheless did not schedule a pretrial or a trial but instead proceeded by default. That decision was contrary to the rules, and the district court erred.

**The error was prejudicial.**

The mere existence of an error by the district court is not, by itself, sufficient to require relief on appeal; rather, the complaining party must also show that the error prejudiced the complaining party. *See* Minn. R. Civ. P. 61 (requiring that harmless error be ignored); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (stating that "[a]lthough error may exist, unless the error is prejudicial, no grounds exist for reversal"); *see also In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015)

(applying prejudicial-error analysis in a transfer-of-custody case on appeal), *rev. denied* (Minn. July 21, 2015).

Grandmother contends that the district court's error was prejudicial. As E.R.H.'s legal custodian, grandmother was a party to the permanency matter. *See* Minn. R. Juv. Prot. P. 32.01, subd. 1(b) (listing "the child's legal custodian" as a party to a juvenile-protection matter). As a party, grandmother had "the right to . . . present evidence." Minn. R. Juv. Prot. P. 32.02(i). Grandmother's trial rights included "the right to . . . present evidence" and "witnesses." Minn. R. Juv. Prot. P. 58.02, subd. 2(a)(1), (2). Grandmother argues that the district court's error in proceeding by default prejudiced grandmother by depriving her of her right to present evidence and witnesses.

The department contends that grandmother has failed to demonstrate prejudice because "she fails to articulate what evidence she would have presented, and she fails to demonstrate that her evidence would have been sufficient to change the outcome of the case." We are not persuaded. The default proceeding took place less than a month after the transfer petition was filed. The parties had not completed discovery nor exchanged witness and exhibit lists. Although grandmother's counsel was able to participate in the default proceeding to some extent, she was understandably not fully prepared to present evidence to oppose the transfer petition at the admit/deny hearing. *See* Minn. R. Juv. Prot. P. 55.01 ("An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 56."). In these circumstances, we do not think grandmother has to establish that she would have prevailed at trial in order to show that erroneously proceeding by default prejudiced her.

We reverse the district court’s order and remand to the district court for further proceedings consistent with this opinion. Nothing in this opinion shall be read to require a change in the temporary placement of E.R.H. pending resolution of the proceedings on remand. If, however, the district court deems it necessary to alter E.R.H.’s placement pending resolution of the matter on remand, the district court shall retain the discretion to do so. The district court shall reopen the record to the extent necessary for the district court to decide the remanded portion of the case, and nothing in this opinion shall be construed as an expression of this court’s opinion regarding how to resolve matters to be decided on remand.<sup>3</sup>

**Reversed and remanded.**

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<sup>3</sup> In this appeal, grandmother also argues, in the alternative, that the district court failed to make sufficient findings to support the transfer of custody. We need not reach this second argument because our decision on her first argument is dispositive. But, because we are remanding for further proceedings, we take this opportunity to emphasize that a district court “must make sufficient findings to enable appellate review.” *Hansen v. Todnem*, 908 N.W.2d 592, 597 n.2 (Minn. 2018); see *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”); *In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 669-70 (Minn. App. 2020) (citing this aspect of *Rosenfeld* in a juvenile-protection appeal). Findings are sufficient to facilitate effective appellate review if the district court identifies its decision and the basis for its decision. See *Hagen v. Schirmers*, 783 N.W.2d 212, 217 (Minn. App. 2010). In addition, Minnesota Statutes section 260C.517(a) (2022) requires a district court to make “detailed findings” on four statutory factors when ordering permanent placement of a child out of the home.