

*This opinion is nonprecedential except as provided by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
A24-0444**

In the Matter of the Welfare of the Children of: M. R. S. and N. M. M., Parents.

**Filed September 16, 2024
Affirmed
Larson, Judge**

Dakota County District Court
File No. 19HA-JV-23-979

Madison Flodeen, Cannon Falls, Minnesota (for appellant-mother M.R.S.)

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Considered and decided by Bjorkman, Presiding Judge; Worke, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant M.S. (mother) appeals a district court decision to file a default order after denying her request to participate remotely at a pretrial hearing regarding a petition to terminate her parental rights to two of her children. Mother claims the district court violated her due-process rights when it denied her request and then proceeded with an

evidentiary hearing by default. But because mother fails to demonstrate that the district court's decision prejudiced the outcome of the case, we affirm.

FACTS

In June 2014, mother gave birth to first child. First child's father is R.G. Mother gave birth to second child in October 2021 and third child in February 2023. N.M. is the adjudicated father of second child and the alleged father of third child.¹

On February 21, 2023, mother gave birth to third child at a hospital. Prior to giving birth to third child, mother did not receive prenatal care. Third child's umbilical cord tested positive for amphetamine and methamphetamine. Third child was born early, and doctors recommended that a pediatrician see third child within 48 hours after discharge from the hospital.

After discharge, on February 24, 2023, a social worker employed by respondent Dakota County Social Services Department (the county) visited mother's home. Mother had not scheduled a medical appointment for third child. Mother agreed to a urinalysis, which tested positive for methamphetamine. The social worker helped mother assemble a safety plan whereby mother agreed to "continue to work with social services to determine sobriety," schedule a medical appointment for third child, and seek a therapist. On February 27, 2023, the social worker returned to the home, and mother admitted she had not scheduled a medical appointment for third child. Mother submitted to an oral-swab test that was positive for methamphetamine.

¹ We refer to first child, second child, and third child collectively as "the three children."

In early March 2023, the social worker made a series of visits to the home, and third child still had not seen a pediatrician. On March 9, 2023, the county placed second child and third child on a 72-hour hold and placed them in foster care. The foster parents brought third child to a pediatrician and third child weighed “5 ounces less than her birth weight.”

On March 13, 2023, the county filed a Child in Need of Protection or Services (CHIPS) petition for the three children. After the county filed the CHIPS petition, first child went into R.G.’s care, and second child and third child went “under the interim custody and legal responsibility of [the county] for placement in foster care.”

The district court held an admit/deny hearing on April 5, 2023. After mother failed to appear, the district court adjudicated the three children CHIPS by default. The county composed case plans requiring mother to participate in drug treatment, submit to drug testing, and attend supervised visits with the three children. In the months that followed, mother refused to follow the county’s case plans except for some supervised visits.

In October 2023, the county filed a petition to terminate mother’s and N.M.’s² parental rights to second child and third child under Minn. Stat. § 260C.301, subd. 1(b) (2022), after they had been out of mother’s custody for 204 days (TPR petition). The county asserted that terminating mother’s parental rights was necessary to free the children for adoption and to ensure “a safe, stable, and sober living environment.” The same day, the county filed a petition to transfer permanent legal and physical custody of first child to

² The district court granted the county’s petition to terminate N.M.’s parental rights to second child and third child. N.M. does not challenge that decision on appeal.

R.G. under Minn. Stat. § 260C.515, subd. 4 (2022) (transfer petition). The county stated that first child was thriving with R.G.

The district court scheduled a pretrial hearing for January 3, 2024, on both the TPR petition and transfer petition. Mother did not appear for the hearing, but asked to participate remotely because she had a toothache. The county moved for the district court to proceed despite mother's failure to appear. *See* Minn. R. Juv. Prot. P. 18.01. The district court, instead, rescheduled the pretrial hearing for January 31, 2024. The district court "strongly indicated to [mother's] counsel that it would be important for [mother] to understand [she] would need to appear in person at [the] next hearing."

Around January 25, 2024, mother gave birth to fourth child. Days later, mother failed to appear at the rescheduled pretrial hearing. The county again moved for the district court to proceed despite mother's failure to appear. Mother's counsel opposed the motion and asked the district court to allow mother to appear remotely or by telephone. The district court granted the county's motion, noting that it granted "an additional pretrial [hearing] to give [mother] the opportunity to appear in person prior to any trial" and that it "emphasized the importance of . . . being present . . . with the understanding that default was a real possibility."

The district court then allowed the county to present its case for both the TPR petition and transfer petition. The district court heard testimony from three witnesses and allowed mother's counsel to cross-examine those witnesses.

The first witness was a case manager with the county. The case manager testified that, aside from supervised visits, mother largely refused to work with the county to take

the proper steps to reunite with the three children, particularly by failing to allow the county to monitor her chemical use and dependency.

The second witness was a county investigative assessment worker. The assessment worker testified that she met with mother in the hospital after mother gave birth to fourth child. At the hospital, mother had admitted “to nursing staff that she had used [methamphetamine] as recently as three days prior” to fourth child’s birth. Fourth child’s umbilical cord tested positive for both amphetamine and methamphetamine.

The third witness was the three children’s guardian ad litem (GAL). The GAL testified that first child was “in a very stable environment.” R.G. was “on top of all” first child’s medical, emotional, and educational needs and was “extremely supportive of her.” The GAL testified that second child and third child were thriving in their placement homes with their needs “being appropriately met.” Moreover, the GAL stated that second child and third child were achieving “all their developmental milestones” and their “family [was] very stable for them and love[d] having them.”

The GAL further testified that she had struggled to maintain contact with mother but observed multiple visits. During one visit, mother “was very appropriate and engaged,” but during another she “was talking about inappropriate content . . . and making promises that [she would not] be able to keep.” On cross examination, the GAL testified that continued contact between mother and the three children would be in the children’s best interests, provided the contact happened in a “safe and sober situation.”

After the hearing, the district court filed orders granting both the TPR petition and transfer petition. *See* Minn. R. Juv. Prot. P. 18.02. With respect to the TPR petition, the

district court found “[t]he efforts and services provided by [the county] to reunify [second child and third child] with [mother] were relevant to the safety and protection of the children, adequate to meet the needs of the children and family, culturally appropriate, available, accessible, consistent and timely under the circumstances.” The district court noted that the county composed case plans for mother, offered drug testing and treatment, and attempted to facilitate supervised visitation. Nevertheless, the district court found that mother “did not avail [herself] of these services,” beyond supervised visitation.

In addition, the district court determined the county had shown by clear and convincing evidence that multiple statutory grounds supported termination. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4)-(5), (7)-(8). And the district court found that terminating mother’s parental rights was in second child’s and third child’s best interests because mother had “not taken any steps to address her chemical dependency, ha[d] not demonstrated ongoing sobriety, and [was] clearly not in a position to care for [second child and third child] for the reasonably foreseeable future.”

In February 2024, mother moved to vacate the orders granting the TPR petition and transfer petition, *see* Minn. R. Juv. Prot. P. 22.02, and requested a post-trial hearing on her motion. Mother argued the district court violated her due-process rights when it denied her request to appear remotely for the January 31, 2024 hearing. Mother did not attach any affidavit or other supporting evidence to her motion. Later that month, the district court filed an order denying mother’s motion, along with her request for a hearing, determining that her “constitutional rights were not violated.”

Mother filed separate appeals contesting the district court’s due-process determination for the TPR petition and transfer petition. This opinion addresses her claim as it relates to the TPR petition. We address her due-process claim as it relates to the transfer petition in a companion order opinion. *See In re Welfare of Child of M.R.S.*, No. A24-0452 (Minn. App. Sept. 16, 2024).

DECISION

Mother argues that the district court violated her procedural due-process rights when it denied her request to appear remotely at the pretrial hearing. We review whether a district court violated an individual’s right to procedural due process de novo. *Sawh v. City of Lino Lakes*, 8223 N.W.2d 627, 632 (Minn. 2012).³

Under the United States and Minnesota Constitutions, all people are entitled to due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. “[A]ll parents have a fundamental right to the ‘care, custody, and control’ of their children and termination of parental rights permanently deprives a parent of that due-process-protected liberty right.” *In re Welfare of Child. of G.A.H.*, 998 N.W.2d 222, 231 (Minn. 2023) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Consequently, parents have a “‘commanding’

³ Mother also appears to argue the district court violated her due-process rights when it denied her motion to vacate without a hearing. But mother does not cite any legal authority governing motions to vacate to support her argument. “[I]nadequately briefed issues are not properly before an appellate court.” *In re Welfare of Child. of V.R.R.*, 2 N.W.3d 587, 595 (Minn. App. 2024), *rev. denied* (Minn. Mar. 22, 2024). Therefore, to the extent she separately raises a due-process challenge regarding the motion to vacate, mother forfeited the issue.

constitutional interest in an accurate and just . . . decision” in a juvenile-protection proceeding. *See id.* (quoting *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 27 (1981)).

To protect this constitutionally protected interest, Minn. Stat. § 260C.163, subd. 8 (2022), and the Minnesota Rules of Juvenile Protection Procedure provide procedural protections to ensure the state does not erroneously deprive parents of their fundamental right to a relationship with their children. Specifically, parents have a right to “be present at all hearings,” “make argument[s] in support of or against [a] petition,” “present evidence,” and “cross-examine witnesses.” Minn. R. Juv. Prot. P. 32.02(c), (h)-(j). And a “[district] court may permit appearance for a juvenile protection proceeding by telephone or remote technology.” Minn. R. Juv. Prot. P. 11.02.

The Minnesota Rules of Juvenile Protection Procedure also recognize the importance of “secur[ing] for each child . . . a home that is safe and permanent” without “unnecessary delays in court proceedings.” Minn. R. Juv. Prot. P. 1.02(a), (e). The rules are, therefore, rooted in “the compelling government interest of protecting children.” *See In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 134-35 (Minn. 2014). Consistent with this interest, the rules and statutes “provide specific procedural timelines to ensure that a child is placed in a safe and permanent home as expeditiously as possible consistent with due process.” *G.A.H.*, 998 N.W.2d at 232.

There are times when providing a parent with procedural protections and reaching an expeditious decision for the benefit of the child are in tension. And in such cases, procedural protections for parents “are not absolute.” *Id.* at 233. As relevant here, “if a parent . . . fails to appear for . . . a pretrial hearing . . . after being properly served with a

summons . . . or a notice[,] . . . the [district] court may receive evidence . . . *or* reschedule the hearing,” subject to limitations mother does not raise here. Minn. R. Juv. Prot. P. 18.01 (emphasis added). If the district court chooses not to reschedule the hearing and receives evidence, the district court may enter an “order granting the relief sought in the petition as to that parent.” Minn. R. Juv. Prot. P. 18.02. Referred to as a “default order,” rule 18.02 still requires the state to prove by clear and convincing evidence at least one statutory ground for termination of parental rights under Minn. Stat. § 260C.301, subd. 1(b). *See also G.A.H.*, 998 N.W.2d at 233.

“[W]hen faced with a choice to proceed to terminate parental rights without allowing the parent to present her case *or* to continue or reschedule the hearing, a district court should make *every reasonable effort* to allow the parent to present her case without causing unnecessary delay in finding a safe and permanent home for the child.” *Id.* at 238. In making its choice, the district court must account for “the profound nature of the parent-child relationship and the substantial consequences of erroneously severing that relationship.” *Id.*

But we need only resolve whether a parent’s a due-process rights are violated when the district court proceeds by default if the parent shows prejudice warranting reversal. *Id.*; *see also In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008) (“[P]rejudice as a result of [an] alleged [due process] violation is an essential component of the . . . analysis.”); *In re Welfare of Child. of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008) (dispensing with an alleged due-process violation on the ground that it was not prejudicial). To identify prejudice, we first evaluate “the district court’s findings to determine whether

they address the statutory criteria” for granting the county’s petition and whether those findings were clearly erroneous. *G.A.H.*, 998 N.W.2d at 239. Second, we assess whether the parent demonstrated that the evidence she would have provided if not for the alleged due-process violation would have materially affected the outcome of the case. *Id.* at 240-42.

Here, mother does not challenge that the district court addressed the relevant statutory criteria when it granted the TPR petition. Instead, she relies on the second step in the prejudice analysis, arguing that her participation in the hearing would have impacted the outcome.

In *G.A.H.*, the district court proceeded with a TPR trial in the mother’s absence and did not allow the mother’s counsel to call witnesses or cross-examine the GAL. *Id.* at 228-29. The mother submitted an affidavit along with her motion for a new trial, explaining the testimony she would have offered and identifying two character witnesses she would have called on her behalf. *Id.* at 230, 240-41. Despite this offer of proof in the record, the supreme court concluded that it was insufficient to carry her burden to show prejudice. *Id.* at 241-42.

Here, mother has provided even less information. Unlike *G.A.H.*, mother did not attach any offer of proof to her motion to vacate. On appeal, mother asserts that her testimony would have explained the “steps she was taking to complete the agency’s case plans.” But arguments made in an appellate brief are not evidence. *See* Minn. R. Civ. App. P. 110.01 (“The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.”). Further, unlike

G.A.H., the district court allowed mother's attorney to participate in the evidentiary hearing by cross-examining the county's witnesses. Therefore, although mother was not physically present or able to appear remotely, mother's counsel still represented her interests at the hearing. Accordingly, we conclude that mother did not meet her burden to show that her remote participation would have materially affected the district court's decision to terminate her parental rights.

Because mother has failed to show prejudice from the district court's alleged due-process violation, we affirm.

Affirmed.