

*This opinion is nonprecedential except as provided by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
A25-0082**

In the Marriage of:

Beth Ostergaard Stillwell, petitioner,
Respondent,

vs.

Harry Alan Stillwell,
Appellant.

**Filed November 17, 2025
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-FA-12-8135

Victoria Brenner, Laura E. Kvasnicka, Taft Stettinius & Hollister LLP, Minneapolis,
Minnesota (for respondent)

Harry A. Stillwell, Minnetrista, Minnesota (pro se appellant)

Considered and decided by Harris, Presiding Judge; Connolly, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this parenting dispute, appellant-father argues that the special master did not have
the authority to recommend a change in custody which was ultimately adopted by the

district court. Appellant-father also argues that a change in custody should not have been ordered without first holding an evidentiary hearing on the matter. We affirm.

FACTS

Appellant Harry Alan Stillwell (father) and respondent Beth Ostergaard Stillwell (mother) were married in 2004. The parties have two joint children, daughter A.G.S. born May 2007,¹ and son H.J.S. born July 2009. In 2012, mother filed for dissolution of their marriage.

In September 2014, the parties resolved the issues of custody and parenting time by a stipulation. The parties agreed they would share joint legal custody for religious and educational decisions, that mother would have sole legal custody for the purposes of medical and dental decisions, and that no physical-custody designation would be made. The parties agreed to a parenting time schedule where mother had the children nine overnights and father had the children five overnights every two weeks. The district court incorporated the parties' stipulation into an amended dissolution judgment and decree, which was entered in November 2014.

Since the parties' dissolution, they have had numerous high-conflict disputes and have engaged in nearly continuous litigation, including several appeals to this court.

This appeal concerns the district court's March 2019 order appointing a special master pursuant to rule 53 of the Minnesota Rules of Civil Procedure. That order granted

¹ The parties' daughter, A.G.S., is now over the age of 18 so the court no longer has jurisdiction over custody and parenting time of her. However, the court retains jurisdiction over the parties' son, H.J.S., who is still a minor as he is only 16 years of age.

the special master authority to “issue orders enforcing and implementing the [c]ourt’s [o]rders, subject to review by [the district court].” The special master was expressly authorized to:

- “expand or restrict either party’s parenting time or to order supervised parenting time,”
- to recommend to the district court “a change of legal or physical custody,” and
- to “make any decision that he/she is asked to address.”

However, the order expressly stated the special master did “not have the power to modify the current custody labels.”

In December 2021, father filed a motion with the district court requesting he be awarded sole legal and sole physical custody of the children and for the appointment of a guardian ad litem. In September 2022, the guardian ad litem issued its initial report recommending permanent sole physical and sole legal custody be awarded to mother. In March 2023, the guardian ad litem issued a supplemental report again recommending permanent sole physical and sole legal custody be awarded to mother. The special master then conducted an independent review of the record before issuing the order (Sept. 27 order).

In the Sept. 27 order, the special master granted mother permanent sole physical and sole legal custody of the parties’ minor children, as well as a suspension of father’s parenting time until a list of conditions was met. The Sept. 27 order went on to state that if the district court believed the special master was acting beyond her authority, the district court was “implore[d]” to consider the (proposed) ruling to be the special master’s

“strongest recommendations.” In October 2023, the district court adopted the special master’s recommendation when the court signed and filed the Sept. 27 order.

Later in October 2023, father filed a motion requesting the district court vacate the special master’s Sept. 27 order. In March 2024, the district court denied father’s appeal of the Sept. 27 order. The district court reviewed the findings of fact, conclusions of law, and procedural rulings in the Sept. 27 order. In reviewing the findings of fact, the district court found no errors had been made. The court found the special master had conducted a thorough review of the record and had issued a detailed and comprehensive 21-page order. The court noted that the evidence clearly reflected the parties’ (then) minor children were endangered by father and his behavior towards them. In reviewing the conclusions of law, the district court found all statutes and caselaw were appropriately and accurately applied and the special master had made thoughtful and appropriate recommendations that protected the minor children’s best interests. Lastly, the district court reviewed the procedural summaries and found that no abuse of discretion had been committed by the special master.

In July 2024, father brought a motion for amended findings, requesting the district court grant his request to vacate the special master’s Sept. 27 order and grant an evidentiary hearing. In November 2024, the district court denied the motion, finding that father had “waived his right to an evidentiary hearing by electing not to request an evidentiary hearing after receiving the [g]uardian’s recommendations that the [district court] award [m]other sole legal and physical custody of the [m]inor [c]hildren.”

On January 6, 2025, the district court filed an amended order on the motion to amend findings.

On January 16, 2025, father filed the notice of appeal. Father seeks review of the Order Denying Appeal of Special Master's Twenty-Second Order and Attorney's Fees dated March 9, 2024; the Order on Motion to Amend Findings dated November 22, 2024; and the Amended Order on Motion to Amend Findings dated January 6, 2025.

DECISION

I. The district court did not err by ruling the special master had authority to recommend a change in custody.

Father argues that the district court erred in ruling the special master had authority to recommend a change in custody as the March 2019 order appointing the special master denied the master authority to modify custody labels. Additionally, father argues that the special master acted outside the scope of authority contained in that order as neither party had moved the court regarding the change in custody, depriving father of his due-process rights as he was not afforded an opportunity to be heard on the issue.

“The court must decide de novo all objections to findings of fact made or recommended by a master unless the parties stipulate with the court's consent that: (1) the master's findings will be reviewed for clear error, or (2) the findings of a master appointed under Rule 53.01(a)(1) or (3) will be final.” Minn. R. Civ. P. 53.07(c). “The court must decide de novo all objections to conclusions of law made or recommended by a master.” Minn. R. Civ. P. 53.07(d); *cf. Prior Lake State Bank v. Nat'l Sur. Corp.*, 80 N.W.2d 612, 617 (Minn. 1957) (stating “findings of a referee[,] when adopted by the court appointing

him[,] have the same force on appeal as the findings of a court and they will not be disturbed, whether based on oral or written evidence, unless they are manifestly and palpably contrary to the weight of the evidence”).

A. The special master’s authority under Minn. R. Civ. P. 53.

A district court is authorized to appoint a special master pursuant to Minn. R. Civ. P. 53. A special master can be appointed to perform duties consented to by the parties; hold trial proceedings, and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by some exceptional condition, or the need to perform an accounting or resolve a difficult computation of damages; or address pretrial and posttrial matters that cannot be addressed effectively and timely by an available district judge. Minn. R. Civ. P. 53.01. The order appointing a master must direct the master to proceed with all reasonable diligence and must state “the master’s duties, including any investigation or enforcement duties, and any limits on the master’s authority under Rule 53.03.” Minn. R. Civ. P. 53.02(b)(1). Further, a master has the authority “to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties” unless expressly directed otherwise. Minn. R. Civ. P. 53.03.

On March 11, 2019, the district court appointed a special master pursuant to Minn. R. Civ. P. 53 on the basis that the court lacked the time and the judicial resources necessary to closely monitor the family’s progress and effectively implement the court’s orders. The order granted the special master the authority to “issue orders enforcing and implementing the [c]ourt’s [o]rders, subject to review by [the district court].” The special master was expressly authorized to “expand or restrict either party’s parenting time or to order

supervised parenting time,” to recommend to the district court “a change of legal or physical custody,” and to “make any decision that he/she is asked to address.” However, the order expressly stated the special master did “not have the power to modify the current custody labels.”

The special master filed the Sept. 27 order granting mother permanent sole physical and sole legal custody of the minor children. However, the order clarified that in the event the order was outside of the special master’s authority, the district court was “implore[d]” to consider the order to be the special master’s “strongest recommendations.”

In acting on a special master’s order, the district court may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit the order to the master with instructions. Minn. R. Civ. P. 53.07. Here, the district court order that granted the special master authority specifically subjected the special master’s orders to review by the district court. Accordingly, when the special master issued the Sept. 27 order, it was subject to review by the district court.

While appellant argues the special master was acting beyond the scope of the authority granted, this argument fails to recognize the Sept. 27 order was—as an alternative to modifying custody—recommending to the district court a change of legal or physical custody, as the special master was authorized to do. This is evidenced by the special master’s clarification that if the Sept. 27 order exceeded the grant of authority, the district court was “implore[d]” to consider the order to be the special master’s “strongest recommendations.” This recommendation to modify custody was functionally adopted by the district court on October 11, 2023, when the court signed and filed the Sept. 27 order.

B. The special master's authority to address matters not presented by the parties.

The special master has authority under Minn. R. Civ. P. 53.01 to address pretrial and posttrial matters that could not be addressed effectively and timely by the district court. Minn. R. Civ. P. 53.01(a)(3). In this case, the district court order appointing the special master stated that the court lacked the time and judicial resources necessary to closely monitor the family's progress and effectively implement the court's orders. As a result, the special master was appointed to "timely and effectively address the post-trial issues presently before the [c]ourt and *any ongoing issues* that present during the children's minority." (Emphasis added). Further, the order specifically authorized the special master to take all appropriate measures to perform fairly and efficiently the assigned duties.

While appellant argues the duty was on the parties to bring a motion to the court regarding the recommendation of a change in custody, this argument fails. Due to the district court's lack of time and judicial resources, the special master was granted the authority to address ongoing issues present during the children's minority. The issue of child custody has remained an ongoing issue between the parties as is evidenced by the nearly continuous litigation of the point over the last decade. As the special master was granted broad authority to address matters that could not be addressed effectively and timely by the district court, as well as the authority to address ongoing issues present during the children's minority, the special master was authorized to make recommendations regarding child custody, even if the issue was not directly requested by the parties. As a result, father's due-process rights were not violated.

Accordingly, pursuant to the clear mandate of the order appointing the special master, the district court did not err in finding that the special master had authority to recommend a change in custody, which the district court ultimately adopted.

II. The district court did not err in ordering a change in child custody without first holding an evidentiary hearing.

Generally, absent a request for oral testimony, motions in family court are decided without oral testimony. *See* Minn Gen. R. Prac. 303.03(d)(1), (2). While a district court, generally, should not modify custody without an evidentiary hearing, *Clark v. Clark*, 358 N.W.2d 438, 441 (Minn. App. 1984), it may do so without an evidentiary hearing if the parties waive that hearing, *McKinnon v. McKinnon*, 352 N.W.2d 530, 531 (Minn. App. 1984). Here, father contests the district court’s custody modification by challenging the district court’s ruling that he waived any right he had to an evidentiary hearing, and asserting he was deprived of his right to cross-examine the guardian ad litem.

A. Implicit waiver of the evidentiary hearing.

The waiver of an evidentiary hearing may be explicit or implicit. *Adam v. Adam*, 358 N.W.2d 487, 489 (Minn. App. 1984). As noted, the special master was authorized to conduct trial proceedings and evidentiary hearings. *See* Minn. R. Civ. P. 53.01. The guardian ad litem filed a report in September 2022, and an updated report in March 2023. Each report recommended mother be awarded permanent sole physical and permanent sole legal custody. Father did not ask the special master for an evidentiary hearing. The special master, based on the guardian ad litem’s reports and the rest of the record, filed the Sept. 27 order. That order recommended—in the strongest terms—that the district court award

mother permanent sole physical and permanent sole legal custody. Father did not ask the district court to hold an evidentiary hearing. In an October 11, 2023 order, the district court adopted the special master's recommendation. On July 30, 2024—more than nine and a half months after the district court filed its October 11, 2023 order modifying custody, and almost two years after the guardian ad litem filed the first report recommending that custody be modified—father asked the district court for an evidentiary hearing on the custody question.

Given this sequence of events, to rule—as father asks us to do here—that the district court erred by not holding an evidentiary hearing before modifying custody would be to rule that the district court erred by not granting an evidentiary hearing father had not (at that time) requested. Father cites, and we are aware of, no authority requiring the district court to, sua sponte, inflict an unrequested evidentiary hearing on parties before addressing the special master's order. On this record, we conclude that father's prolonged failure to request an evidentiary hearing supports the district court's determination that he implicitly waived his right to an evidentiary hearing on the custody question.

B. Denial of the evidentiary hearing.

Because we affirm the district court's determination that father waived an evidentiary hearing on the custody question, we need not address his argument that he was otherwise deprived of an evidentiary hearing. We note, however, that courts ignore harmless error. Minn. R. Civ. P. 61; see *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (noting that “error without prejudice is not ground for reversal” (quotation omitted)). Further, a party asserting error has the burden of showing both that prejudice arose from

the asserted error, *Sinda v. Sinda*, 949 N.W.2d 170, 176 (Minn. App. 2020); and that the prejudice is substantial, *see Hesse v. Hesse*, 778 N.W.2d 98, 105 (Minn. App. 2009) (denying relief when any prejudice was de minimis). Here, we cannot say that father showed substantial prejudice arising from what he asserts was the district court’s failure to hold a then-unrequested evidentiary hearing. Moreover, this record is overwhelmingly clear that father’s relationship with his children is—and for some time has been—fraught. *See Stillwell v. Stillwell*, No. A23-1487, 2024 WL 3877493, at *3 (Minn. App. Aug. 19, 2024) (affirming findings of child endangerment), *rev. denied* (Minn. Oct. 30, 2024). Thus, even if we addressed this argument, we would not remand for an evidentiary hearing. *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (refusing to remand when doing so would not change the result); *cf. Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that a district court will not be reversed if it reached an affirmable result for the wrong reason).

C. The right to cross-examine the guardian ad litem.

Father asserts that the lack of an evidentiary hearing deprived him of his right to cross-examine the guardian ad litem as an adverse witness who authored a report or recommendation on custody of the minor children. *See Thompson v. Thompson*, 55 N.W.2d 329, 332 (Minn. 1952); *see also Scheibe v. Scheibe*, 241 N.W.2d 100, 100 (Minn. 1976). But because we affirm the district court’s determination that father waived an evidentiary hearing, we need not address this point. We note, however, that father was on notice that the guardian’s appointment would automatically be terminated upon submission of the supplemental report, and that he failed to request a hearing during that time. Thus,

even if the district court would have held the evidentiary hearing (that father had not yet requested) before modifying custody, the guardian ad litem would have already been discharged. Further, and more importantly, father has not articulated why he wants to cross-examine the guardian ad litem or how he suffered prejudice by not being awarded such an opportunity. *See* Minn. R. Civ. P. 61; *see also* *Katz*, 408 N.W.2d at 839; *Grein*, 364 N.W.2d at 387. Accordingly, the district court did not err in failing to grant father the opportunity to cross-examine the guardian ad litem.

Affirmed.