**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-0345**

Hailey Elisabeth Steele Daberkow,
a minor, by and through her parents and natural guardians
John Daberkow and Bernadette Steele,
Respondent,

vs.

Anne Remer, f/k/a Anne Hummel,
Respondent,

American Family Mutual Insurance Company, intervenor,
Appellant

**Filed November 13, 2017**
**Reversed and remanded**
**Worke, Judge**

Mille Lacs County District Court
File No. 48-CV-16-2264

Grim Daniel Howland, Lindell & Lavoie, LLP, Minneapolis, Minnesota (for respondent Hailey Elisabeth Steele Daberkow)

Michael Coyne Rajkowski, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondent Anne Remer)

Darwin S. Williams, Eden Prairie, Minnesota (for appellant American Family Mutual Insurance Company)

Jennifer E. Olson, TSR Injury Law, Bloomington, Minnesota (for amicus Minnesota Association for Justice)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Johnson, Judge.

## U N P U B L I S H E D  O P I N I O N

**WORKE**, Judge

Appellant argues that the district court erred by denying its motion to intervene as of right and by declining to hear argument from appellant upon the motion for approval of a *Miller-Shugart* agreement. Because the district court did not properly consider the motion to intervene, we reverse and remand.

## FACTS

In May 2012, respondent Hailey Elisabeth Steele Daberkow was bitten by a dog at the home of respondent Anne Remer, the dog's owner, who operated a childcare center out of her home. Daberkow was a child enrolled at Remer's childcare center at the time of the dog-bite incident.

Riverport Insurance Services, LLC (Riverport) issued a childcare insurance policy to Remer's childcare center. Appellant American Family Mutual Insurance Company (American Family) issued a homeowners insurance policy to Remer. Soon after the incident, Daberkow notified Riverport of a claim for bodily injury. Riverport accepted coverage and agreed to a settlement of $25,000, the policy limit. Daberkow also notified American Family of her claim. On July 18, 2012, American Family denied coverage for Daberkow's claim under Remer's homeowners policy.

Over the next two-and-a-half years, Daberkow and Remer notified American Family of their intent to settle through a *Miller-Shugart* agreement. Approximately four years after the incident, Daberkow informed American Family that she and Remer had entered into a *Miller-Shugart* agreement (the agreement) and agreed to submit the case to

a neutral arbitrator for a determination of damages. American Family appeared at the arbitration but declined to participate. The arbitrator valued Daberkow's injuries and damages at $510,000.

In November 2016, Daberkow filed the present action seeking approval of the agreement and entry of judgment against Remer. In December 2016, American Family filed its motion to intervene as of right, but the district court elected to consider Daberkow's motion without regard to the motion to intervene. The district court then held that the agreement was reasonable and prudent, approved the agreement, entered judgment against Remer for $510,000, and "dismissed" the motion to intervene.

**D E C I S I O N**

American Family first argues that the district court erred by denying its motion to intervene as of right. Orders concerning intervention as of right are subject to de novo review and are independently assessed on appeal. *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. App. 2005).

The rule for intervention as of right provides:

> Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Minn. R. Civ. P. 24.01. "The spirit behind Rule 24 is to encourage all legitimate interventions, and the rule is to be liberally applied." *Gruman v. Hendrickson*, 416 N.W.2d 497, 500 (Minn. App. 1987).

A nonparty must satisfy a four-part test to intervene as of right:

> (1) timely application for intervention;
> (2) an interest relating to the property or transaction which is the subject of the action;
> (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and
> (4) a showing that the party is not adequately represented by the existing parties.

*Blue Cross/Blue Shield of R. I. v. Flam*, 509 N.W.2d 393, 395 (Minn. App. 1993), *review denied* (Minn. Feb. 24, 1994).

In its order approving the agreement and entering judgment against Remer, the district court ruled that the agreement was reasonable and "dismissed" American Family's motion to intervene.[1] This dismissal does not constitute a ruling on American Family's motion. Consequently, we may not decide whether the district court erred by dismissing American Family's motion. *See Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) ("[A]n undecided question is not usually amenable to appellate review."); *see also In re Tr. Known as Great N. Iron Ore Props.*, 308 Minn. 221, 231-32, 243 N.W.2d 302, 308 (1976) (stating that appellate courts better fulfill their function when they review issues after they have been decided below, rather

[1] It appears that district courts typically consider the reasonableness of a *Miller-Shugart* agreement in the context of a declaratory judgment or garnishment action, rather than in the manner adopted by the district court. *See Brownsdale Coop. v. Home Ins. Co.*, 473 N.W.2d 339, 341-42 (Minn. App. 1991) (addressing the district court's conclusion—in a declaratory judgment action—as to the reasonableness of a *Miller-Shugart* agreement), *review denied* (Minn. Sept. 25, 1991); *see also Burbach v. Armstrong Rigging & Erecting, Inc.*, 560 N.W.2d 107, 109, 111 (Minn. App. 1997) (concluding that the district court erred in holding—in the context of a garnishment action—that a *Miller-Shugart* agreement was enforceable and reasonable).

than deciding them in the first instance). We therefore reverse and remand to the district court for consideration of whether American Family satisfies the relevant test for intervention as of right. Because American Family will now have an opportunity to present argument to the district court concerning the four requirements of its motion to intervene, we need not decide whether the district court abused its discretion by refusing to allow American Family to argue at the hearing upon Remer's motion.

**Reversed and remanded.**