This opinion is nonprecedential except as provided by Minn.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
A21-0493

In Re the Custody of: KCDC DOB 1-9-2018, Kristin Annette Vanderheyden, et al.,
Respondents,

vs.

Brittany Joyce Simon,
Respondent,

Dannie Kory Contreras,
Respondent,

David Frank Simon, et al., intervenors,
Appellants.

Filed January 18, 2022
Affirmed
Reilly, Judge

Todd County District Court
File No. 77-FA-20-463

Franz J. Vancura, Quinlivan & Hughes, P.A., Long Prairie, Minnesota (for respondents Kristin Annette Vanderheyden, et al.)

John C. McIntosh, McIntosh Law Office, Buffalo, Minnesota (for appellants)

Considered and decided by Reilly, Presiding Judge; Johnson, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellants challenge the district court's denial of their motion to intervene as a matter of right in a third-party custody proceeding among respondents. Appellants argue that the district court (1) erred by denying the motion to intervene, (2) misapplied the statute addressing custody modification, and (3) improperly denied the motion to intervene without an evidentiary hearing. We affirm.

FACTS

Respondent mother, Brittany Simon, and respondent father, Dannie Contreras, are the biological parents of a minor child born in 2018. Respondents Kristin Vanderheyden and Gregory Vanderheyden are the child's maternal grandmother and her spouse. Appellants David Simon and Nancy Simon are the child's maternal grandfather and his spouse. In September 2019, father and mother transferred temporary custody of the child to grandmother and her spouse through a delegation of parental authority. About nine months later, father and mother determined it would be in the child's best interest to "make the Designation of Parental Authority permanent." They voluntarily entered a third-party custody consent decree with grandmother and her spouse. The district court approved this custody consent decree. In November 2020, grandfather and his spouse moved to intervene as a matter of right in the custody matter and sought joint physical and joint legal custody of the child. The district court denied the requested relief. Grandfather and his spouse appeal.

DECISION

"A parent's right to make decisions concerning the care, custody, and control of [the parent's] children is a protected fundamental right." *SooHoo v. Johnson*, 731 N.W.2d 815, 820 (Minn. 2007) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). This right includes "deciding who spends time with the child." *In re C.D.G.D.*, 800 N.W.2d 652, 655 (Minn. App. 2011), *rev. denied* (Minn. Aug. 24, 2011). Because of the importance of a parent's fundamental right to make decisions regarding his or her child, the district court must give "special weight" to a fit custodial parent's wishes about a third party's interactions with the child. *Id.* at 661.

Father and mother wanted the child's maternal grandmother and her spouse to raise the child. Father and mother executed a delegation of parental authority in September 2019, granting temporary custody to grandmother and her spouse. With exceptions not relevant here, a parent "may delegate to another person, for a period not exceeding one year, any powers regarding care, custody, or property of the minor or person subject to guardianship." Minn. Stat. § 524.5-211 (2020); *see also* Minn. Stat. § 257B.06, subd. 5 (2020) (providing that a similar delegation may be accomplished under chapter 257B). The statute, by its own terms, delegates parental rights "for a period not exceeding one year." *In re Welfare of Child of T.C.M.*, 758 N.W.2d 340, 346 (Minn. App. 2008). "The delegation of parental authority is a temporary, revocable grant of a limited power of attorney that does not divest [the parents] of [their] parental rights." *Id.* at 347.

Here, mother explained that the parents delegated parental authority to grandmother and her spouse because they believed grandmother and her spouse would provide "the most

stability and the safest environment" for the child. At the time, mother and the child had been living with grandmother and her spouse since the child was about six months old. The child spent alternating weeks with grandmother and her spouse, and with grandfather and his spouse. Yet the parents decided to delegate authority to grandmother and her spouse because they "allowed [the parents] to be part of [the child's] life." Mother stated that grandfather and his spouse, by contrast, had stopped talking to father and mother.

About nine months later, the parents determined it was in the child's best interests to make the situation "permanent." In June 2020, the parents voluntarily entered a third-party consent decree with grandmother and her spouse under Minn. Stat. § 257C.07 (2020). Section 257C.07 permits a parent to transfer legal and physical custody of a child to another by a custody consent decree. *Id.* "The court may approve a proposed consent decree if the custody arrangement is in the best interests of the child and all parties to the decree agree to it after being fully informed of its contents." *Id.*

The district court approved the custody consent decree in July 2020. The district court noted that the child "has had only a sporadic relationship [] with [the parents] since January 9, 2018." The child has "regularly resided" with grandmother and her spouse since February 2018, and alternated weeks between grandmother and her spouse, and grandfather and his spouse. The district court found that the parents together with grandmother and her spouse "agree that it is in the best interests of the child" that grandmother and her spouse undertake custody and control of the child. Based on these determinations, the district court awarded grandmother and her spouse permanent sole legal and permanent sole physical custody of the child under Minn. Stat. § 257C.07.

More than three months later, grandfather and his spouse sought to intervene as a matter of right under Minn. R. Civ. P. 24.01. Under this rule, an individual may intervene in a proceeding "when the applicant claims an interest relating to the property or transaction . . . and the applicant is so situated that the disposition of the action may . . . impair or impede the applicant's ability to protect that interest," unless the applicant's interest is represented by an existing party. Minn. R. Civ. P. 24.01. This rule requires: "(1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) the applicant's interest is not adequately represented by existing parties." *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012) (citation omitted). Failure to establish any one of these factors is dispositive. *See id.* (holding that a party must satisfy each of the four requirements for intervention as of right). We review the district court's decision regarding whether to grant intervention of right de novo. *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. App. 2005).

Here, the second factor is dispositive because grandfather and his spouse do not have "an interest relating to the property or transaction which is the subject of the action." Minn. R. Civ. P. 24.01. Controlling caselaw directs that rule 24.01 does not apply to child-custody proceedings arising under chapter 257C. "Not every alleged interest in a lawsuit supports intervention as a matter of right." *Schroeder v. Minn. Sec'y of State Steve Simon*, 950 N.W.2d 70, 76 (Minn. App. 2020), *rev. dismissed* (Minn. Nov. 25, 2020). And generally, "personal or familial interests are insufficient to warrant intervention as a matter of right." *Id.* (citing *Valentine v. Lutz*, 512 N.W.2d 868, 870 (Minn. 1994)).

In *Valentine*, a child's former foster parents sought to intervene as of right in a child-protection proceeding out of concern for the child's health and wellbeing. 512 N.W.2d at 870. The foster parents sought an order transferring custody of the child to them, or, in the alternative, an order granting them visitation. *Id.* The district court denied the motion to intervene. *Id.* We affirmed the district court's decision on appeal and the supreme court granted further review. *Id.* The supreme court affirmed, holding that the foster parents did not have a right to intervene and were not entitled to an evidentiary hearing. *Id.* at 869. The supreme court explained that the "property or transaction" language in rule 24.01 "more appropriately applies to interests involved in traditional civil actions, such as in contracts and torts, rather than the very personal and family interests" arising in family-law matters. *Id.* at 870. The supreme court also held that the "type of interaction between foster parents and child is not an interest that allows intervention under Rule 24.01." *Id.*

This court later applied *Valentine*'s reasoning in family-law proceedings involving custody disputes. In *Van Meveren v. Van Meveren*, we held that an adult daughter's personal or family interest in the welfare of her younger brothers did not constitute an "interest" under rule 24.01 allowing her to intervene as of right into her parents' custody dispute. 603 N.W.2d 671, 673 (Minn. App. 1999) (applying *Valentine*), *rev. denied* (Minn. Feb. 23, 2000). We held that the sister's interest in "her concern for her younger brothers' welfare" stemmed from "the sort of very personal and family interests the *Valentine* court held were insufficient to meet the requirement of Rule 24.01." *Id.* (internal quotation marks omitted). We concluded that "[s]uch personal or family interests do not constitute an

'interest sufficient' to support intervention as of right under Rule 24.01." *Id.* We therefore held that the district court did not err in denying the sister's motion to intervene. *Id.*[1]

Grandfather's counsel argued for the first time at oral argument that we should apply the reasoning set forth in *Halverson ex rel. Halverson v. Taflin*, 617 N.W.2d 448 (Minn. App. 2000).[2] In that case, a minor child's father alleged that mother's new boyfriend was abusing the child and sought an order for protection. *Id.* at 449. The district court granted the order for protection and awarded father temporary custody of the child. *Id.* Mother was not a party to these domestic-abuse proceedings. *Id.* Mother sought to intervene but the district court denied her request as untimely. *Id.* at 449-50. On appeal, we concluded that the district court erred by denying mother's request to intervene because "[a] parent meeting the criteria of Minn. R. Civ. P. 24.01 has a right to intervene in non-ex parte proceedings commenced under the Domestic Abuse Act, Minn. Stat. § 518B.01 . . . on

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[1] During oral hearing on this matter, counsel referenced our nonprecedential decision in *Hennepin County v. Brown*, No. A09-258, 2009 WL 4796450, at *1 (Minn. App. Dec. 15, 2009). In *Brown*, a minor child's grandparents moved to intervene in a custody matter under rule 24. *Id.* The district court denied the motion to intervene. *Id.* We applied *Valentine* and *Van Meveren* and held that grandparents did not have a right to intervene as of right in a de facto custody matter or seek visitation because the child's welfare was not "an interest relating to the property or transaction which is the subject of the action." *Id.* at *2. We therefore determined the district court did not err by denying the motion to intervene as a matter of right under rule 24.01. *Id.*

[2] We note that because this theory was raised for the first time at oral argument before this court, it was not previously presented to, and considered by, the district court. Thus, the question is not properly before this court, and we need not address it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see Getz v. Peace*, 934 N.W.2d 347, 353 n.3 (Minn. 2019) (declining to address an argument first raised at oral argument, stating that "[w]e generally will not consider arguments raised for the first time on appeal") (quoting *Hegseth v. Am. Fam. Mut. Ins. Grp.*, 877 N.W.2d 191, 196 n.4 (Minn. 2016)). We will, however, exercise our discretion to, briefly, address the point.

behalf of the parent's child." *Id.* at 449. We concluded that "absent an immediate and present danger of abuse necessitating an ex parte order, due process compelled [mother's] inclusion in the action to protect her fundamental parental rights." *Id.* at 452.

This case is readily distinguishable. *Halverson* provides that "[t]he failure to grant a parent an opportunity to be heard on custody issues is a denial of equal protection and due process." *Id.* at 451 (citation omitted). *Halverson* recognizes that parents have a constitutionally protected liberty interest in deciding on the care, custody, and control of their children. *Id.* The holding does not extend to grandparents. And *Halverson* arose in proceedings under the Minnesota Domestic Abuse Act. *Id.* That opinion instructed that the domestic abuse act provides "extensive procedural protections that guard against erroneous deprivation of a parent's rights." *Id.* The domestic abuse act is not at issue here and *Halverson* does not apply.

As we stated earlier, a parent's right to make decisions regarding his or her children is a protected fundamental right. *SooHoo*, 731 N.W.2d at 820. Here, both parents chose to transfer custody to grandmother and her spouse under chapter 257C. The child-custody proceedings under this chapter are related to a "personal and family interest," rather than to an "interest relating to [a] property or transaction." *Valentine*, 512 N.W.2d at 870. Applying *Valentine* and *Van Meveren*, we determine that grandfather and his spouse had

no right to intervene in the custody proceedings under rule 24.01. As a result, the district court did not err by denying the motion to intervene as a matter of right.[3]

Affirmed.

[3] Grandfather and his spouse also argue the district court's custody decision constitutes an abuse of discretion and the district court erred by declining to hold an evidentiary hearing on the best interests of the child. Because we affirm the district court's decision denying the motion to intervene, we do not reach these issues. *See In re Custody of D.T.R.*, 796 N.W.2d 509, 513 (Minn. 2011) (stating that "[a] party with no interest in the subject of the litigation cannot be aggrieved by the adjudication and consequently has no right to appeal").