This opinion is nonprecedential except as provided by Minn.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
A21-1043

In the Matter of the Welfare of the Children of:

D. L. W.,

Commissioner of Human Services,
Legal Custodian.

Filed May 23, 2022
Reversed and remanded
Cochran, Judge

Hennepin County District Court
File No. 27-JV-19-1107

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Considered and decided by Cochran, Presiding Judge; Bryan, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this juvenile-protection matter, appellant-grandmother challenges the district court's order denying her motion to intervene as a matter of right in permanency proceedings for her two grandchildren and granting the motion of respondent to rule grandmother out as a permanency option. Grandmother argues that the district court erred in its decision with respect to both motions.

We first conclude that the district court erred when it determined that grandmother did not meet the requirements for intervention as a matter of right under Minn. R. Juv. Prot. P. 34.01, subd. 2. We further conclude that grandmother was prejudiced as a result during the rule-out proceeding. We therefore reverse and remand with instructions for the district court to grant grandmother's motion to intervene and to conduct a new rule-out hearing.

FACTS

The two children who are the subject of this appeal were born in 2016 and 2017. In February 2018, they were placed in foster care with appellant K.H. (grandmother). The placement occurred after respondent Hennepin County Human Services and Public Health Department (the county) filed a children-in-need-of-protection-or-services (CHIPS) petition for the children. In August 2018, a district court adjudicated the children as CHIPS. In March 2019, the county petitioned the district court to terminate the parental rights of both parents. In January 2020, the district court terminated all parental rights to the children and placed the children under the guardianship of the Minnesota Commissioner of Human Services.

Progress Towards Permanency

Both before and after parental rights were terminated, the county considered grandmother as a possible permanency option for the children. But in late 2020, after the children had been living with grandmother for almost three years, the county raised concerns about grandmother's ability to properly supervise and care for them. The county expressed concern that grandmother was not adequately supervising the children because the children had been involved in a number of accidents resulting in physical injury. The county also identified other incidents where injury was avoided but safety concerns remained. And the county had other concerns including that the children, both of whom have special needs, were not consistently attending early-childhood education programming.

Based on these concerns and in consultation with the children's guardian ad litem, the county determined that grandmother "could not properly care for the children or keep them safe." Staff for the county met with grandmother in December 2020 to inform her that she would no longer be considered a permanency option for the children. According to the staff involved in the meeting, grandmother was very upset and made several statements suggesting that she might leave the state or hurt herself or the children, though she also stated that only "stupid people" would take such actions. Out of concern for the children's safety, the county removed the children from grandmother's care and placed them in a shelter home the next day. The children remained at the shelter home for approximately five months. On May 4, 2021, the children were placed in a pre-adoptive home with someone other than grandmother.

Motions and Related District Court Proceedings

The next day, May 5, grandmother filed a motion to intervene as a matter of right under Minn. R. Juv. Prot. P. 34.01, subd. 2. This rule gives a grandparent the right to intervene in a juvenile-protection matter if the child who is the subject of the matter has lived with the grandparent "within the two years preceding the filing of the petition." Minn. R. Juv. Prot. P. 34.01, subd. 2. The county opposed grandmother's motion.

On July 8, 2021, the county filed a motion to rule grandmother out as a permanency option for the children. In its supporting memorandum, the county argued that grandmother should be ruled out because of her alleged failures to properly supervise the children and to meet their medical, behavioral, educational, and safety needs. The county argued that permanent placement with grandmother would not be in the children's best interests. The county also filed the affidavit of a social worker to support its memorandum and requested a hearing on its motion.

On July 15, 2021, the district court heard oral argument on grandmother's motion to intervene. Grandmother argued that her right to intervene is clear under rule 34.01, subdivision 2, because the grandchildren lived with her within the two years preceding the filing of the petition to terminate parental rights (TPR). Grandmother also argued that the district court was required to decide grandmother's motion to intervene before it could consider the county's rule-out motion. The county disagreed and opposed grandmother's motion to intervene. The county argued that the relevant petition for purposes of determining the right to intervene under rule 34.01, subdivision 2, is the CHIPS petition

and noted that the grandchildren did not live with grandmother prior to the filing of the CHIPS petition. The county also argued the substance of its rule-out motion.

After hearing from the parties on the motion to intervene, the district court decided to take the intervention issue under advisement. The district court then proposed holding a contested hearing on the county's rule-out motion in the near future and told grandmother that she could participate in that hearing without having party status. Based on the district court's statements, the parties agreed to an evidentiary hearing on the rule-out motion.

On July 26, 2021, the district court held the evidentiary hearing on the county's motion to rule grandmother out as a permanency option. Both the social worker and grandmother testified. Counsel for each party cross-examined the opposing witness. The social worker reaffirmed the statement in her affidavit that she believed it was not in the children's best interests to be placed permanently with grandmother and stood by the county's decision to remove the children from grandmother's home in December 2020. Grandmother testified that she wanted to adopt her grandchildren and believed that she was the best placement for them.

On cross-examination, counsel for the county pointed out that the state was reviewing grandmother's foster-care license and asked grandmother how many licensing-correction orders she had received. She only remembered receiving one, but counsel for the county noted "for impeachment purposes" that she had received three. In closing argument, counsel for grandmother argued that the county was "rushing this through for some reason and trying to cut [grandmother] off from her statutory right to argue that [the children's] placement . . . not being with her is unreasonable." Counsel

asked the court not to rule out grandmother "prematurely" before she had the chance to argue against the county's motion for adoptive placement and file her own motion for adoptive placement.

District Court Decision

In a written order, the district court granted the county's request to rule out grandmother as a permanency option and denied grandmother's motion to intervene. The district court first explained its rule-out decision. The district court noted that grandmother exhibited "a pattern" of difficulty adequately supervising the children. The district court also found that grandmother failed to meet at least one child's needs "by refusing to send [them] to the preschool program identified by the school district." The district court recognized that grandmother "loves these children dearly" but concluded that the county "adequately supported" its request to rule grandmother out as a permanency option.

The district court then determined that its decision to grant the county's rule-out motion rendered the issue of grandmother's intervention moot. In the alternative, the district court concluded that the right to intervene under rule 34.01, subdivision 2, "is intended to be available for grandparents who have lived with children in the two years before the filing of a CHIPS petition" and therefore did not apply in this case.

Grandmother appeals.

DECISION

I. The district court's conclusion that grandmother did not have a right to intervene under Minn. R. Juv. Prot. P. 34.01, subd. 2, is inconsistent with the rule.

A grandparent's ability to intervene as a matter of right in a juvenile-protection matter is governed by Minn. R. Juv. Prot. P. 34.01, subd. 2. Under the rule, the grandparent of a child who is the subject of a juvenile-protection matter "shall have the right to intervene as a party if the child has lived with the grandparent within the two years preceding the filing of the petition." Minn. R. Juv. Prot. P. 34.01, subd. 2. The rules of juvenile protection procedure do not define the term "petition" as used in rule 34.01, subdivision 2. *See id.*; Minn. R. Juv. Prot. P. 2.01 (defining certain terms but not defining "petition").

The district court read the word "petition," as used in the rule, to refer only to a CHIPS petition. Based on that reading, the district court determined that grandmother was not entitled to intervene because the children were not placed with her until after the CHIPS petition was filed. Grandmother challenges this determination, arguing that the district court interpreted the term "petition" too narrowly when it limited the term to only one type of petition—a CHIPS petition. She contends that the rule and the term "petition" should be interpreted more broadly to allow intervention as a matter of right in circumstances such as these, when a child has lived with a grandparent within two years preceding the filing of a TPR petition.

Appellate courts review de novo a district court's construction of the rules of juvenile protection procedure. *In re Welfare of Child of R.K.*, 901 N.W.2d 156, 159 (Minn. 2017). When interpreting the rules, "we look first to the plain language of the rule and its

purpose." *Id.* at 160 (quotation omitted). "Where the language is plain and unambiguous, that plain language must be followed." *Id.* (quotation omitted).

Rule 34.01, subdivision 2, plainly states that a grandparent has the right to intervene in juvenile-protection matters if the child subject to the proceeding has lived with the grandparent in the two years preceding "the filing of the petition." Minn. R. Juv. Prot. P. 34.01, subd. 2. The rule does not limit its application to any particular petition or to a CHIPS petition specifically.

In this case, there are two petitions to which the rule could refer: the CHIPS petition filed on February 2, 2018, and the TPR petition filed on March 18, 2019. Both petitions involve a "juvenile protection matter." *See* Minn. R. Juv. Prot. P. 2.01(19)(a), (e) (defining "juvenile protection matter" to include both CHIPS and TPR matters). To determine which petition is the relevant petition for purposes of rule 34.01, subdivision 2, we consider the specific facts of this case in the context of the statutory framework governing juvenile-protection matters.

A child's interaction with the juvenile-protection system often starts, as it did here, when a CHIPS petition is filed. *See* Minn. Stat. § 260C.141 (2020). If a child is subsequently adjudicated in need of protection or services and removed from the care of the parent, "a two-tracked process begins." *In re Welfare of Child. of M.L.S.*, 964 N.W.2d 441, 449 (Minn. App. 2021); Minn. Stat. §§ 260C.193, subd. 3(b), .202(a) (2020). One track involves efforts by the responsible social services agency to reunify the child with the parents. *Id.* (citing Minn. Stat. § 260.012(a) (2020)). "[A] second track, called concurrent permanency planning, identifies a potential permanent home for the child

in case the reunification efforts fail." *Id.* (citing Minn. Stat. §§ 260C.223, subd. 1(b), 260.012(k) (2020)). Under Minnesota law, the responsible social services agency must give priority to relatives when placing the child in foster care and during permanency planning. *See* Minn. Stat. §§ 259.57, subd. 2(c) (requiring a court to consider adoptive placement with a relative before consideration of other persons), 260C.212, subd. 2(a) (imposing a similar requirement for foster-care placement) (2020); *see also* Minn. Stat. § 260C.221(a) (2020) (stating that a county "shall" consider placement with a relative without delay when a child is removed from a parent).

In circumstances where reunification efforts fail, the responsible social services agency files a permanency or TPR petition. *See* Minn. Stat. § 260C.505 (2020). And, if a district court grants a TPR petition, the district court retains ongoing jurisdiction over the juvenile-protection matter until the child is adopted or reaches the age of 18 (except for certain children who remain in foster care past the age of 18). Minn. Stat. §§ 260C.317, subd. 3(d)(1)-(3), .521, subd. 1 (requiring yearly court reviews following permanency disposition orders), .605, subd. 1(a) (implying ongoing jurisdiction over efforts to finalize adoption) (2020).

Here, in May 2021, grandmother moved to intervene in the ongoing proceedings stemming from the county's TPR petition filed in March 2019. Though the county initiated a separate juvenile-protection matter in February 2018 when it filed its CHIPS petition, that CHIPS matter was closed at the time grandmother filed her motion.[1] As a result, when

[1] In juvenile-protection matters, except as otherwise provided by statute or by the rules of juvenile protection, the rules of evidence apply. Minn. R. Juv. Prot. P. 3.02, subd. 1. Under

grandmother moved to intervene in May 2021, the *only* proceeding that was open, and therefore the *only* proceeding in which grandmother could seek to intervene, was the permanency phase of the proceeding initiated by the TPR petition. And it was in this proceeding that grandmother filed her motion to intervene. Because grandmother sought to intervene in the permanency phase of the proceeding initiated by the TPR petition, we conclude that the relevant petition here for purposes of rule 34.01, subdivision 2, must be the TPR petition. Indeed, it is the only possibility under the facts of this case.

Consequently, we conclude that the TPR petition, not the CHIPS petition, is "the petition" for purposes of determining whether grandmother has a right to intervene under rule 34.01, subdivision 2. And we further conclude that, because it is undisputed that the children lived with grandmother "within the two years preceding the filing of the petition," grandmother has a right to intervene as a party in the ongoing permanency proceeding. Minn. R. Juv. Prot. P. 34.01, subd. 2. The district court therefore erred by denying grandmother's motion to intervene as a matter of right.

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the rules of evidence, "[j]udicial notice may be taken at any stage of the proceeding." Minn. R. Evid. 201(f). And "[c]ourt records and files from prior adjudicative proceedings are an appropriate subject for judicial notice by the court." *In re Welfare of D.J.N.*, 568 N.W.2d 170, 174 (Minn. App. 1997) (discussing propriety of district court taking judicial notice of prior court file); *see In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 872 n.5 (Minn. 2021) (discussing judicial notice in juvenile-protection matters). Here, the register of actions for the CHIPS file underlying the TPR file in which this appeal was taken shows that the CHIPS file was closed when grandmother filed her motion to intervene. We take judicial notice of this fact.

Resulting Prejudice

We generally grant relief from error only if an appellant demonstrates that the error caused prejudice. *See, e.g.*, *D.J.N.*, 568 N.W.2d at 176 (declining to reverse termination of parental rights where appellants failed to demonstrate that district court error caused prejudice); *In re Welfare of Child. of A.D.B.*, 970 N.W.2d 725, 731 (Minn. App. 2022) (citing this aspect of *D.J.N.*).

Grandmother contends that the denial of her motion to intervene caused her prejudice by denying "her rights [that] she should have been able to exercise *prior to* the rule-out hearing," including the rights to conduct discovery and subpoena witnesses. *See* Minn. R. Juv. Prot. P. 32.02 (listing party rights). She asserts that the ability to exercise these rights would have allowed her to access county records relevant to her defense, helped her to avoid impeachment by counsel for the county at the rule-out hearing, and otherwise given her a greater chance of defeating the county's motion to rule her out as an adoptive placement option for her grandchildren. The county contends that even if the district court erred by denying grandmother's motion to intervene, grandmother was not prejudiced because she agreed to the ad hoc procedure proposed by the district court to address the county's rule-out motion. We conclude that grandmother has demonstrated sufficient prejudice to warrant reversal because she was not afforded the full rights of a party prior to the rule-out hearing and instead was essentially limited to being a participant.

The rules of juvenile protection procedure address the rights of two different categories of individuals who are involved in a juvenile-protection matter: parties and participants. Minn. R. Juv. Prot. P. 32, 33. A relative who requests notice has a right to

participate in the matter, even without party status, as a "participant." Minn. R. Juv. Prot. P. 33.01(f) (providing that participants in a juvenile-protection matter include "relatives or other persons providing care for the child and other relatives who request notice"). But the rights of a "participant" and a "party" are not the same. *See* Minn. R. Juv. Prot. P. 33.02, subd. 1, 32.02 (delineating the rights of participants and parties). The rights of participants are limited to notice, legal representation, being present at hearings unless otherwise excluded, and offering information at the discretion of the court. Minn. R. Juv. Prot. P. 33.02, subd. 1. If the participant is a relative providing care for the child, they also "have a right to be heard in any hearing regarding the child." *Id.*, subd. 2. Parties, on the other hand, have numerous rights under the rules, including but not limited to the rights to conduct discovery and subpoena witnesses—the specific rights that grandmother has identified as significant here. *See* Minn. R. Juv. Prot. P. 32.02 (listing the rights of a party, including but not limited to the rights to conduct discovery, bring motions before the court, subpoena witnesses, make arguments, present evidence, and cross-examine witnesses).

At a minimum, if the district court had properly granted grandmother's motion to intervene under rule 34.01, subdivision 2, her ability to exercise her rights as a party to conduct discovery and subpoena witnesses could have changed the outcome of the rule-out proceeding. Grandmother could have accessed medical and educational attendance records for her grandchildren along with other records related to the allegations on which the county based its decision to eliminate her as a permanency option. She could have avoided or minimized impeachment by counsel for the county based on her failure to remember the number of times she received a licensing-correction order. And she might have called

additional witnesses who could further speak to her ability to adequately supervise and care for the children. On this record, we conclude that grandmother was prejudiced as a result of the district court's erroneous interpretation of rule 34.01, subdivision 2.

II. The district court erred in relying on mootness as a basis for denying grandmother's motion to intervene.

We next address the district court's alternative ground for denying grandmother's motion to intervene—that grandmother's motion to intervene was rendered moot by the district court's decision to grant the county's rule-out motion. We conclude that the district court erred in this regard as well.

"The doctrine of mootness requires that we decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). The mootness doctrine "therefore[] implies a comparison between the relief demanded and the circumstances of the case at the time of decision in order to determine whether there is a live controversy that can be resolved." *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). If a court cannot grant effective relief, the matter is generally dismissed as moot. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005).[2] "Mootness is an issue of justiciability, which is an issue of law we review de novo." *State ex rel. Young v. Schnell*, 956 N.W.2d 652, 662 (Minn. 2021).

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[2] We note that the district court denied grandmother's motion to intervene rather than dismissing it as moot. Because we reverse and remand to the district court for further proceedings including a new rule-out hearing, we need not address whether the district court erred by denying, rather than dismissing, the motion.

In its order, the district court addressed the intervention issue only after granting the county's request to rule out grandmother as a permanency option. Based on its rule-out decision, the district court stated its belief that "the intervention issue is moot." The district court did not provide any further explanation.

Given our conclusion that grandmother had a right to intervene and was prejudiced during the rule-out hearing as a result of the district court's failure to allow her to do so, the district court's rule-out decision cannot serve as a basis for concluding that grandmother's motion to intervene was moot. *Cf. Doe v. F.P.*, 667 N.W.2d 493, 501 (Minn. App. 2003) (reversing and remanding denial of a motion for leave to amend after concluding that "the district court was incorrect in its underlying legal ruling"), *rev. denied* (Minn. Oct. 21, 2003). We therefore conclude that the district court erred when it relied on mootness as a basis for denying grandmother's motion.

In sum, we conclude that the district court erred when it denied grandmother's motion to intervene. Because the denial of intervention prevented grandmother from exercising her full rights as a party and therefore may have affected the outcome of the rule-out proceeding, we conclude that reversal of both the denial of grandmother's motion to intervene and the grant of the county's motion to rule grandmother out as a permanency option for the children is warranted. We reverse and remand with instructions to the district court to grant grandmother's motion to intervene under rule 34.01, subdivision 2, and to hold a new hearing on the rule-out motion after the parties have had the opportunity to

conduct discovery and exercise the other rights of a party under the rules of juvenile-protection procedure.[3]

Reversed and remanded.

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[3] Because we reverse and remand to the district court for further proceedings including a new rule-out hearing, we do not reach grandmother's other arguments challenging the district court's rule-out decision and express no opinion as to the merits of those arguments.