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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1329**

In the Matter of the Welfare of the Child of: C.M.K., Parent

**Filed February 5, 2008  
Affirmed  
Peterson, Judge**

Dakota County District Court  
File No. J2-06-57729

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Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and  
Crippen, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**PETERSON**, Judge

This appeal is from an order that dismissed appellant-grandmother's permanent-placement petition for lack of personal jurisdiction over respondent-mother. We affirm.

### FACTS

In June 2006, appellant-intervenor D.M.K. (grandmother) reported that her daughter C.M.K. (mother) abused Y.B.J., mother's daughter. At that time, mother and Y.B.J. were living with grandmother.<sup>1</sup> Dakota County Social Services (the county) filed a child-in-need-of-protection-or-services (CHIPS) petition. The county issued grandmother an emergency foster-care license and initially placed Y.B.J. with grandmother.

During its initial investigation, the county discovered that grandmother was receiving social-security disability benefits. After obtaining releases from grandmother, the county contacted the Social Security Administration and learned that grandmother was receiving benefits, in part, because she had been diagnosed with a schizoaffective disorder and had a history of mental-health issues.

In October 2006, the district court held a special review hearing. At the hearing, mother made a general admission to the CHIPS petition, and the district court entered a CHIPS adjudication for Y.B.J. The district court also ordered that Y.B.J. be placed with

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<sup>1</sup> Grandmother asserts that she has always been Y.B.J.'s primary caregiver. The district court did not make a specific finding regarding this issue, but in the memorandum that accompanied its order, the district court indicated that grandmother has played an important role in Y.B.J.'s upbringing.

Y.B.J.'s uncle, Ronald Brown, (grandmother's son and mother's brother) due to grandmother's mental-health issues.

In November 2006, the district court transferred Y.B.J.'s placement from Ronald Brown to non-relative foster care. The transfer was allegedly due to grandmother's harassing attempts to contact Y.B.J.

In December 2006, the district court held another review hearing. The district court transferred Y.B.J.'s placement to another non-relative foster family because the prior foster family had difficulties managing some of Y.B.J.'s behavioral issues. The district court also granted grandmother's motion to intervene.

In January 2007, the county filed a petition to terminate mother's parental rights. Grandmother moved to dismiss the termination petition and to grant her permanent custody of Y.B.J. or, in the alternative, requested a hearing to determine permanent-placement issues. The district court denied grandmother's motion. Later that month, grandmother filed an "Answer and Counter-Petition," responding to the county's termination petition and requesting "alternative permanent placement" with grandmother. Grandmother served mother by faxing and mailing copies of the answer and counter-petition to mother's attorney.

In February 2007, the district court held the admit/deny hearing on the county's TPR petition. Mother appeared and denied the allegations in the TPR petition. The district court scheduled the trial for May 2007.

In May 2007, the district court held the termination trial. Because mother did not appear and did not comply with her case plan, the county requested that the district court

terminate mother's parental rights by default. After the district court heard testimony regarding the termination of mother's parental rights, grandmother requested that the court hear evidence on her "counter-petition."

The county argued that the district court did not have jurisdiction over grandmother's "counter-petition" because mother was not personally served with the "counter-petition." Grandmother conceded that mother was not personally served but argued that she should be given a chance to present her case. Grandmother argued that the court "could even throw out the whole counter petition, but since the answer is still there [the court] can still go forward . . . with the evidence on whether or not the county made the decision [that] is in the best interests of the child." The county contended that grandmother could present her case through a competing adoption petition. Grandmother agreed that contesting the adoption could be a remedy but argued that she should be allowed to present her case because many of the witnesses were already present.

The district court stated that it would allow grandmother to present evidence objecting to the termination. Both grandmother and the county presented evidence regarding grandmother's competence. Grandmother asked to submit written argument on the issue of whether service was proper, but she did not submit any argument. The district court determined that grandmother did not properly serve mother and that it did not have jurisdiction to consider grandmother's "counter-petition." This appeal followed.

## **DECISION**

Grandmother argues that the district court erred when it determined that because grandmother did not personally serve her petition on mother, it did not have personal

jurisdiction over mother to act on the petition. “If service is not effective, the court lacks personal jurisdiction and the resulting juvenile protection decision is void.” *In re Welfare of the Children of S.C.*, 656 N.W.2d 580, 583 (Minn. App. 2003). Whether service of process was proper is a question of law, which this court reviews de novo. *Id.*

“Unless the court orders service by publication . . . , the summons and petition shall be personally served upon the child’s parent or legal custodian, and the summons shall be served personally or by U.S. mail upon all other parties and attorneys.” Minn. R. Juv. Prot. P. 32.02, subd. 3(a). “Personal service means personally delivering the original document to the person to be served or leaving it at the person’s home or usual place of abode with a person of suitable age and discretion residing therein.” Minn. R. Juv. Prot. P. 31.02, subd. 1.

Grandmother’s “counter-petition” requested “alternative permanent placement relief according to Minn. R. Juv. Prot. P. 33.02.” Grandmother’s petition, however, did not indicate whether her request was made under Minn. R. Juv. Prot. P. 33.02, subd. 3(c), or Minn. R. Juv. Prot. P. 33.02, subd. 4(b). Rule 33.02, subdivision 3, deals with “Termination of Parental Rights Matters,” and subdivision 4 deals with “Permanent Placement Matters.” Minn. R. Juv. Prot. P. 33.02, subs. 3, 4. The district court treated grandmother’s petition as a petition for alternative permanent-placement relief under Minn. R. Juv. Prot. P. 33.02, subd. 3(c). In her reply brief, grandmother also asserts that her petition was made under Minn. R. Juv. Prot. P. 33.02, subd. 3(c),<sup>2</sup> which states:

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<sup>2</sup> We note that, because grandmother did not explicitly identify the subdivision of rule 33.02 under which she was requesting relief, her petition could also have been addressed

In addition to the content requirements set forth in [Minn. R. Juv. Prot. P. 33.02, subd. 1], any termination of parental rights petition filed by the county attorney or agent of the Commissioner of Human Services may seek alternative permanent placement relief, and any other party may seek only transfer of permanent legal and physical custody to a relative as the alternative to termination of parental rights. A petition seeking alternative permanent placement relief shall identify which proposed permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option(s) is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

The general requirement is that a petition under rule 33 “shall be served pursuant to Rule 32.02.” Minn. R. Juv. Prot. P. 33.01, subd. 1. Furthermore, a petition in a termination-of-parental-rights matter “shall be served pursuant to Rule 32.02.” Minn. R. Juv. Prot. P. 33.01, subd. 3(b).

The district court determined that grandmother’s petition under rule 33.02, subd. 3(c), could not be considered because it was not personally served on mother. Grandmother argues that her counter-petition, filed under rule 33.02, subd. 3(c), after the county initiated a termination proceeding, did not have to be personally served pursuant to rule 32.02, subd. 3(a), because the counter-petition is a responsive action. But rule 33.01, subd. 1, which applies generally to juvenile-protection matters, states that a

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under rule 33.02, subd. 4. Under that subdivision, personal service on mother would have been required. *See* Minn. R. Juv. Prot. P. 33.01, subs. 1, 4(b); Minn. R. Juv. Prot. P. 32.02, subd. 3(a).

petition shall be served pursuant to rule 32.02 and does not distinguish between different petitions filed with respect to the same child. Rule 32.02, subd. 3(a), states that a “petition shall be personally served upon the child’s parent.” We see no basis in the language of the rule for concluding that when one petition under rule 33.02, subd. 3, has been filed and personally served on a parent, a later, competing petition does not need to be personally served on the parent. Therefore, grandmother’s petition needed to be personally served on mother.

It is undisputed that mother was not personally served with the answer and counter petition. The affidavit of service indicates that grandmother served mother’s attorney by faxing and mailing copies of the answer and counter-petition. Because mother was not personally served with grandmother’s petition, the district court did not err when it dismissed grandmother’s petition for lack of personal jurisdiction.

At oral argument on appeal, grandmother argued for the first time that mother waived personal service when she appeared at the initial appearance on the county’s TPR petition in February 2007. “Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.” Minn. R. Juv. Prot. P. 32.02, subd. 6. Grandmother, however, did not raise this issue in the district court or in her appellate brief, and the issue is waived. *See Peterson v. BASF Corp.*, 711 N.W.2d 470, 482 (Minn. 2006) (stating that “[i]t is well-established that failure to address an issue in brief constitutes waiver of that issue”); *see also Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.

1988) (stating that a reviewing court generally can only consider arguments made to the district court).

**Affirmed.**