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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2386**

James Mark Vogel,  
petitioner,  
Appellant,

vs.

Vicky Lynn Carrier,  
Respondent.

**Filed March 10, 2009  
Affirmed  
Worke, Judge**

Becker County District Court  
File No. 03-F8-04-050615

Timothy H. Dodd, 611 Summit Avenue, Suite 110, Detroit Lakes, MN 56501 (for appellant)

Richard E. Ziegler, 1009 Lake Avenue, P. O. Box 1026, Detroit Lakes, MN 56501 (for respondent)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

On appeal from the dismissal without prejudice of his motion for legal custody and parenting time of the parties' child, appellant-father argues that the dismissal should be remanded with instructions for a hearing. We affirm.

## DECISION

Appellant James Mark Vogel argues that the district court abused its discretion by dismissing without prejudice his motion for custody and parenting time. Two years after appellant filed the motion, respondent Vicky Lynn Carrier moved to dismiss because of several continuances caused by appellant's incarceration and his desire to be physically present at the motion hearing. "The law favors cases being decided on their true merits," and, thus, a dismissal without prejudice may be preferable to a dismissal with prejudice when the dismissal is based on procedural issues. *Lampert Lumber Co. v. Joyce*, 405 N.W.2d 423, 426 (Minn. 1987). The district court's decision to dismiss without prejudice is reviewed for an abuse of discretion. *Wessin v. Archives Corp.*, 592 N.W.2d 460, 467 (Minn. 1999).

The district court determined that custody decisions are to be based on the parties' current circumstances and because appellant was currently incarcerated, an immediate decision was not in the best interests of the child. Appellant argues that the court's custody decision is without adequate findings and is reversible error. But the district court did not render a custody decision. The district court determined that it would not be in the child's best interests to decide custody and parenting time until appellant was out of prison, had established where he planned to live, and was in a position to exercise parenting time and contribute in child rearing. Appellant agreed with the district court that immediately settling the issue was not realistic or in the child's best interests. Therefore, appellant incorrectly asserts that the district court committed reversible error in its custody decision because the court did not issue a custody decision.

Appellant also argues that prison rules permit his daughter to visit him if she is accompanied by a responsible adult. Appellant's argument is flawed for at least two reasons. First, appellant never mentioned this prison rule in district court; thus, it is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that generally, appellate courts address only issues presented to and considered by the district court). Appellant had an opportunity to discuss the issue when the district court stated that one of the concerns was that appellant was in prison and, as the court understood things, the prison would not allow visitation with a minor child. Appellant agreed with the district court's determination that appellant's then-circumstances would make it difficult for him to exercise parenting time. Second, appellant fails to provide anything for us to review regarding a prison rule. Thus, not only did appellant fail to raise the issue in district court, but he fails to offer any support here.

Appellant finally argues that he should have his day in court. The district court dismissed without prejudice; thus, appellant still can have his day in court. The dismissal without prejudice prevents the dismissal from operating as a bar to a subsequent suit. The district court explained to appellant that no decision was made and that appellant could again file his motion and raise the same issues. Further, appellant stated that what he really wanted was an order allowing contact. The district court encouraged appellant to continue attempting to contact his daughter. Thus, appellant was allowed to do what he claimed he wanted to do. Therefore, the district court did not abuse its discretion by dismissing without prejudice appellant's motion for custody and parenting time.

**Affirmed.**