

*This opinion is nonprecedential except as provided by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
A22-0958**

In the Matter of the Welfare of the Children of:
A.K., Parent.

**Filed December 12, 2022
Affirmed
Gaïtas, Judge**

Ramsey County District Court
File No. 62-JV-21-4

D.P., Minneapolis, Minnesota (self-represented appellant)

Samantha J. Gemberling, Wolf, Rohr, Gemberling & Allen, P.A., St. Paul, Minnesota (for respondents K.K. and C.K.)

Kathryn Graves, Hanson & Efron P.A., Minneapolis, Minnesota (for respondent A.K.)

John Choi, Ramsey County Attorney, Robert Hamilton, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Social Services Department)

Considered and decided by Gaïtas, Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In this juvenile-protection case, appellant-father D.P. challenges the district court's order denying his motion for a court-ordered visitation schedule with his two children following a transfer-of-custody proceeding. Father argues that the district court abused its discretion by determining that it remains in the children's best interests for respondents-

maternal grandparents K.K. and C.K., who are the children's legal custodians, to retain sole discretion over father's visitation. Because the district court thoroughly considered the children's best interests and did not otherwise abuse its discretion in denying father's motion, we affirm.

FACTS

Father and mother have two joint children. Following a Children in Need of Protection or Services (CHIPS) proceeding, the district court transferred permanent sole legal and permanent sole physical custody to the children's maternal grandparents K.K. and C.K., who fostered the children for the duration of the CHIPS case. The order transferring custody gives maternal grandparents sole discretion over the visitation schedules of both mother and father.

Father moved the district court to increase his visitation time with the children and to order maternal grandparents to allow visitation on weekends and other designated occasions. The district court denied father's motion, finding that maternal grandparents' exercise of discretion over father's visitation is still in the best interests of the children. Father, who is self-represented, now appeals the district court's order.

Before turning to father's legal arguments, we briefly review the underlying facts. In January 2020, mother's four children were adjudicated CHIPS after the youngest child presented to the emergency room with healing rib fractures that suggested the child had been physically abused. The children were placed in foster care with maternal grandparents.

Two of the children, including the child diagnosed with rib fractures, are joint children of mother and father. On January 5, 2021, Ramsey County Social Services petitioned¹ the district court to transfer permanent sole legal and permanent sole physical custody of the two joint children to maternal grandparents after reunification efforts with mother and father were unsuccessful.

During the transfer-of-custody proceeding, the district court continued the hearing to allow father an opportunity to speak with legal counsel and decide whether to file a petition to seek the transfer of custody of the two children to father instead. Father did not file a petition and subsequently failed to attend the hearing. The district court transferred temporary sole legal and temporary sole physical custody to maternal grandparents pending the execution of a Northstar Kinship Assistance Benefit Agreement. Following the district court's temporary custody-transfer order, father filed a motion seeking sole legal and sole physical custody of his two children. The district court denied father's motion, concluding that it was untimely. And the district court filed an order transferring permanent sole legal and permanent sole physical custody to maternal grandparents.

¹ We note that the petition to transfer custody addressed mother's custody of the children only. The petition states that father signed a recognition of parentage for both children and refers to father as the "adjudicated father" in the order. However, it is silent as to his legal and physical custody status at the time the petition was filed. The appellate file does not contain an order adjudicating father as the father or granting him legal and physical custody. Filings in the record—including orders, motions, and briefs—assume that father did not have legal or physical custody of the two children. This assumption is consistent with the legal effect of a recognition of parentage. *See* Minn. Stat. § 257.75, subd. 3(a) (2020) ("Until a temporary or permanent order is entered granting custody to another, the mother has sole custody."). Father's legal status does not impact our analysis of the visitation issues here.

The permanent transfer-of-custody order gives maternal grandparents sole discretion over both parents' visitation with the two children:

It is in the best interests of the children that [mother] and [father] be granted visitation at the discretion of the custodians. The custodians shall determine the date, time, place, and circumstances for the visits, after consulting with [mother] and [father]. These visits will occur if the custodians determine that they are in the best interests of the children. [Mother] and [father] must be sober and chemically free for any of the visits to occur.

Father did not appeal the permanent transfer-of-custody order.

On April 11, 2022—approximately four months after the district court filed the permanent transfer-of-custody order—father moved the district court for a court order governing his visitation time with the children. He claimed that maternal grandparents had decreased his visitation with the two children based on animosity toward him, which was adversely impacting his relationships with the children. Father argued that allowing maternal grandparents to have discretion over his visitation time was no longer in the best interests of the children. He requested a court-ordered increase of his visitation time and a visitation schedule that would include visitation with the children on weekends.

The district court scheduled a hearing on father's motion. Based on the parties' stipulation, multiple exhibits were admitted in evidence at the hearing, including affidavits from all interested parties, video footage of the parties arguing in the street while father dropped off the children at maternal grandparents' home, text messages and emails highlighting a history of scheduling conflicts and negotiations, and a police report detailing an incident where father refused to leave maternal grandparents' home. The parties also

presented oral arguments on father’s motion. After the hearing, the district court filed an order denying father’s motion. The district court determined that it is still in the best interests of the children for maternal grandparents to have sole discretion over father’s visitation.

DECISION

Father argues that the district court abused its discretion when it decided that allowing maternal grandparents to retain sole discretion over father’s visitation continues to be in the best interests of the children. He asks us to reverse the district court’s order denying his motion for court-ordered visitation.

As an initial matter, father contends that, in considering his motion, the district court should have applied family-law standards for parenting time. But our precedential decision in *In re Welfare of Child of A.H.*, 879 N.W.2d 1 (Minn. App. 2016), makes clear that, in a post-permanency case such as this one, juvenile-protection law applies. To decide a visitation motion brought in this context, a district court should “assess whether the proposed visitation is in the best interests of the child.” *A.H.*, 879 N.W.2d at 4-6. The district court therefore correctly applied the juvenile-protection best-interests standard in considering father’s motion. *See* Minn. Stat. § 260C.511(a) (2020) (requiring the district court to consider “all relevant factors”).

We review a district court’s analysis of the best interests of a child for an abuse of discretion. *See In re Welfare of Child. of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008) (stating that abuse-of-discretion standard applies when an appellate court reviews a district court’s best-interests analysis in the context of termination of parental rights). Here, the

district court conducted a thoughtful analysis of the children's best interests, finding that: (1) the relationship between father and maternal grandparents had deteriorated, (2) father's failure to abide by the initial rules and boundaries set by maternal grandparents preceded their animosity toward him, (3) maternal grandparents have attempted to prioritize consistency and structure for the children, (4) father exhibited "unnecessary and confrontational behavior" when he drove his car into maternal grandparents garage and forced his way into their home, and (5) maternal grandparents have demonstrated that they will welcome father into their home and help him financially to allow mother and father to function as a family unit and keep the children safe. Based on these circumstances, the district court determined that it is still in the best interests of the children for maternal grandparents to have sole discretion regarding father's visitation time. We see no abuse of discretion in the district court's evaluation of the children's best interests or its conclusion that those interests support retaining the status quo for visitation.

In addition to challenging the district court's analysis, father argues that the district court abused its discretion by not ordering an evidentiary hearing on his motion. But father never requested an evidentiary hearing and cites no authority supporting his argument that he was entitled to one. Moreover, at the motion hearing, the district court allowed father to introduce numerous exhibits in support of his motion. And the district court placed no limitation on father's ability to present additional evidence. We therefore reject father's assertion that the district court abused its discretion by not ordering an evidentiary hearing on his motion.

Father also argues that the district court was biased against him. An appellate court presumes that the district court discharged its duties in a proper manner. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998). Adverse rulings by a judge alone do not constitute judicial bias. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986). Based on our careful review of the record, we conclude that the district court did not exhibit bias during the hearing, in its order, or in its ultimate decision to deny father's motion.

Father's brief raises two challenges to the underlying juvenile-protection proceedings where the district court transferred sole legal and sole physical custody to the maternal grandparents. But father did not appeal that decision. And the only order appealed here is the district court's denial of father's motion concerning visitation. Thus, we do not consider father's challenges to the earlier proceedings. *See Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966) ("Even though the decision of the trial court in the first order may have been wrong, if it is an appealable order it is still final after the time for appeal has expired."); *see also Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006) (applying this aspect of *Dieseth* in family law appeal), *rev. denied* (Minn. May 16, 2006).

Father argues that several filings in this matter were untimely, prejudicing his ability to respond. The filings in this matter were filed in compliance with juvenile-protection rules, which state, "[a]ny written motion, along with any supporting affidavit or other supporting documentation or memorandum of law, shall be served at least five days before it is to be heard." Minn. R. Juv. Prot. P. 14.02, subd. 3. Moreover, we note that father did not raise this issue during the proceedings before the district court, thereby forfeiting the

issue. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that a reviewing court may only consider issues that were presented and considered by the district court).

Finally, father takes issue with the fact that there is no written parenting plan as required by Minnesota Statutes section 260C.178, subdivision 3 (2020). But this section does not apply to post-permanency proceedings. *Id.* (discussing parental visitation procedures when children have been taken into emergency custody). Thus, the district court did not err when it did not issue a written parenting plan in this case.

Affirmed.