STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1865

In re the Marriage of:

Russell Vander Wiel,
Respondent,

vs.

Sharna Ann Wahlgren,
Appellant.

Filed September 3, 2019
Reversed
Jesson, Judge

Ramsey County District Court
File No. 62-FA-17-2657

Linda S. S. de Beer, Jenna K. Monson, de Beer & Associates, P.A., Lake Elmo, Minnesota (for respondent)

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Evon M. Spangler, Spangler and de Stefano, PLLP, St. Paul, Minnesota (for appellant)

Janet Goehle, Roseville, Minnesota (guardian ad litem)

Considered and decided by Smith, Tracy M., Presiding Judge; Schellhas, Judge; and Jesson, Judge.

S Y L L A B U S

When an adverse party requests the appointment of a guardian ad litem for a party who is not an infant and has never been adjudicated as incompetent, rule 17.02 of the Minnesota Rules of Civil Procedure entitles the party to notice and an opportunity for a hearing before a guardian ad litem is appointed.

O P I N I O N

JESSON, Judge

After appellant Sharna Ann Wahlgren requested multiple extensions of discovery deadlines during the marital-dissolution proceeding, the district court appointed a guardian ad litem for Wahlgren. Because the district court did not provide Wahlgren with notice and an opportunity for a hearing before appointing a guardian ad litem, as required by rule 17.02 of the Minnesota Rules of Civil Procedure, we reverse.

FACTS

Appellant Sharna Ann Wahlgren (wife) married respondent Russell Vander Wiel (husband) on July 5, 1996. After 21 years of marriage, the parties separated in October 2017. That same month, husband filed for divorce. The parties do not have any children, and the primary issue in their dissolution proceeding is the distribution of financial assets.

In May 2018, the parties attempted mediation but reached no agreement. As the case headed toward trial, wife requested several continuances and extensions of discovery deadlines from the district court, including one on June 27, 2018. The next day, while attending husband's scheduled deposition, wife experienced a medical emergency rendering her unresponsive. Wife was transported by ambulance to the hospital. After some medical tests, doctors released her from the hospital the next day.

Shortly after, in early July, husband filed a motion to compel discovery, and the district court granted wife a short continuance. Later that month, husband filed an amended motion to compel discovery. In response, wife submitted an affidavit explaining that since

her hospitalization, she was working with doctors to deal with "ongoing significant health issues" and trying to decide if she needed to take some time away from work. At a hearing on the amended motion to compel discovery, husband orally requested that the district court appoint a guardian ad litem for wife in order to allow the dissolution proceeding to move forward. Wife's counsel noted that wife had recently received a mental-health diagnosis and that she was about to begin a three-week, quasi-residential program to address her mental health. The district court denied husband's request to appoint a guardian ad litem for wife and allowed wife two weeks to respond to discovery requests, but denied wife's request to place the case on inactive status. In denying husband's request to appoint a guardian ad litem, the district court explicitly found that "[t]here is nothing in the record that indicates that [wife] is incompetent to proceed requiring the appointment of a [g]uardian." The district court set a trial date for early November 2018.

In October 2018, wife again requested that discovery deadlines be extended and that the trial be delayed until January 2019. In support of her request, wife submitted a confidential-information form, including a letter from her doctors detailing her mental-health diagnoses and stating that participation in the case was detrimental to wife's mental health. The parties participated in an off-the-record telephone conference with the district court, and shortly after, without providing wife with written notice or a hearing on the record, the district court issued an order appointing a guardian ad litem for wife and rescheduling the trial. Wife appeals, challenging the appointment of a guardian ad litem.[1]

[1] In an earlier order, this court determined that it has jurisdiction over this appeal. After wife filed this appeal, husband informed the district court that he was willing to stipulate

ISSUE

Was the procedure used to appoint the guardian ad litem improper?

ANALYSIS

Wife contends that the district court erred by appointing a guardian ad litem for her without first providing her with notice and a hearing, which she argues are required by rule 17.02 of the Minnesota Rules of Civil Procedure and due process. In order to evaluate wife's argument, we must interpret the Minnesota Rules of Civil Procedure, and address a question of law, which we consider de novo. *Gams v. Houghton*, 884 N.W.2d 611, 616 (Minn. 2016).

We begin our interpretation of rule 17.02 by examining the text of the rule. *Sela Invest. Ltd., LLP v. H.E.*, 909 N.W.2d 344, 347 (Minn. App. 2018). In doing so, we generally interpret words according to their ordinary meaning. *Cox v. Mid-Minn. Mut. Ins. Co.*, 909 N.W.2d 540, 543 (Minn. 2018). The rule, entitled, "Infants or Incompetent Persons," first provides:

> Whenever a party to an action is an infant or is incompetent and has a representative duly appointed under the laws of this state or the laws of a foreign state or country, the representative may sue or defend on behalf of such party. A party who is an infant or is incompetent and is not so

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to an order vacating the appointment of the guardian ad litem. He also filed a motion to dismiss this appeal as moot, indicating that he does not oppose the removal of the guardian ad litem. This court denied that motion, reasoning that in family matters, district courts are required to exercise independent judgment and are not bound by parties' stipulations, so husband's willingness to stipulate to removal of the guardian ad litem did not render the appeal moot. The district court stayed the dissolution proceeding pending the outcome of this appeal. Husband subsequently did not file a brief.

> represented shall be represented by a guardian ad litem appointed by the court in which the action is pending or is to be brought.

Minn. R. Civ. P. 17.02. This provision acknowledges that, in cases where a party is either an infant or incompetent, the party's legal representative may sue or defend against a suit on the party's behalf. But the provision takes an additional step: it states that if a party to a lawsuit is an infant or incompetent person *without* a legal representative, the court *shall* appoint a guardian ad litem to represent that party in the action.[2] *Id.*

Once the question of the necessity of a guardian ad litem is raised, the rule describes the process for such an appointment. Any person may apply "under oath" for the appointment of a guardian ad litem, including the adverse party. *Id.* And the rule specifies information that such an application must contain. *Id.* Then, the rule establishes a procedural framework for deciding a request for appointment of a guardian ad litem:

> If the appointment is applied for by the party or *by a spouse*, parent, custodian or testamentary or other guardian of the party, *the court may hear the application with or without notice*. In all other cases *written notice of the hearing on the application shall be given* at such time as the court shall prescribe, and shall be served upon the party, the party's

[2] The standard used for determining incompetence is not identified in rule 17.02, and we do not reach the definition of incompetence for the purposes of this rule. We acknowledge that in some cases where this rule applies, a party may have been deemed incompetent through separate proceedings. But we also read the rule as permitting the district court to independently find a party incompetent. *See Fonner v. Fairfax Cty., VA*, 415 F.3d 325, 330 (4th Cir. 2005) (finding that "[n]othing in [federal rule 17(c)] prohibits the district court from appointing a guardian ad litem to represent a person not previously adjudicated as incompetent through a state proceeding); *see also Cox*, 909 N.W.2d at 544 (stating that federal cases interpreting analogous portions of a federal rule of civil procedure are instructive).

> spouse, parent, custodian and testamentary or other guardian, if any . . . .

Minn. R. Civ. P. 17.02 (emphasis added).[3] Based on the language of this portion of rule 17.02, if certain family members—including a spouse—or a legal representative are seeking appointment of a guardian ad litem, a district court may consider and decide the request without providing notice to the party for whom a guardian ad litem is being sought.

That happened here. Husband sought the appointment of a guardian ad litem for wife to expedite and facilitate the dissolution proceeding. Husband first orally requested the appointment of a guardian ad litem at a hearing on one of his discovery motions. But the district court denied the request at that time, finding that nothing in the record suggested wife was incompetent so as to require the appointment of a guardian ad litem. Several months later, after wife requested an extension of discovery, the district court held an off-the-record telephone conference and subsequently issued a written order appointing a guardian ad litem for wife. There is no indication of an application for a guardian ad litem made under oath. Wife received no written notice of such an application. And no opportunity for a hearing was provided to wife.

Our analysis of rule 17.02 leads us to conclude that wife was entitled to notice and a hearing before the district court appointed a guardian ad litem for her. Although the text of rule 17.02 allows, in limited circumstances, a district court to appoint a guardian ad litem without notice and a hearing, we conclude that such a limited exception does not apply

[3] Rule 17 of the Federal Rules of Civil Procedure does not contain a provision similar to the notice requirement and its exception found in rule 17.02 of the Minnesota Rules of Civil Procedure.

when an adverse party seeks the appointment of a guardian ad litem for a party, regardless of familial relationships.

We reach this conclusion by first reading the text of rule 17.02 as a whole. The text of the rule states that an adverse party may seek the appointment of a guardian ad litem for the opposing party. Minn. R. Civ. P. 17.02. And later in the rule, district courts are given permission to hear and decide a request for the appointment of a guardian ad litem without notice if certain immediate family members seek the appointment. *Id.* But the rule does *not* provide that same exception to the notice requirement for adverse parties. Accordingly, we read the rule as implicitly requiring a district court to provide notice when an adverse party seeks the appointment of a guardian ad litem, even if the adverse party is one of the identified immediate family members.

Our reading of the rule is bolstered by the history and purpose of the notice provision found in rule 17.02. *Cox*, 909 N.W.2d at 544 (providing that when interpreting a rule of civil procedure, courts may consider the rule's history and purpose). To this end, we first examine the evolution of rule 17.02 in Minnesota, and then turn to the purpose for including the notice provision in the rule.

We begin with the history of rule 17.02. The Minnesota Supreme Court first adopted the Minnesota Rules of Civil Procedure in 1952. Minn. R. Civ. P. 86.01. The 1952 version of rule 17.02 permitted the appointment of a guardian ad litem for infants and incompetent persons and contained a notice provision that stated:

> When application is properly made by an infant [on] his own behalf, or by the general guardian of an infant or incompetent person, no notice shall be required. In other cases,

> notice of such application, designating the time and place of hearing, shall be given to the general guardian of such party or person or to such relative, advisor or friend as the court shall designate. The court may also require that like notice be given to such party or person himself. The court shall specify the time and manner of giving such notices.

Minn. R. Civ. P. 17.02(5) (1953). In the original version of the rule, the *only* instances in which notice was not required were if an infant or general guardian requested the appointment of a guardian ad litem. In any other case, the rule required notice to be provided and permitted the court to require notice be given to the party for whom the guardian ad litem was sought.

But the rule evolved. In 1959, rule 17.02 was amended to include the current language on notice. The advisory committee note explaining the amendment stated that "[t]he amendment expands the present rule and conforms it more nearly to probate court procedure for the appointment of a general guardian." Minn. R. Civ. P. 17.02 1959 advisory comm. note. This note indicates that the purpose of amending the rule to include the current language about notice was to make the appointment process under rule 17.02 align with the procedure used to appoint a general guardian in probate court. And at the time the notice language was added to rule 17.02, the statute governing notice in guardianship proceedings in probate court required notice of a hearing to the person for whom a guardian was sought.[4] Minn. Stat. § 525.55 (1957) (repealed 2003).

[4] The statute provided a limited number of exceptions to the notice requirement not relevant here, including if a person sought a guardian for himself or herself or if a parent or custodial guardian sought appointment of a guardian for an individual under the age of 14. Minn. Stat. § 525.55 (1957) (repealed 2003).

Finally, although our conclusion is based on the text, history, and purpose of rule 17.02, we observe that Wahlgren has an important liberty interest in *not* having a guardian ad litem appointed for her. Litigants possess "liberty interests in avoiding the stigma of being found incompetent, and in retaining personal control over the litigation." *Sturdza v. United Arab Emirates*, 562 F.3d 1186, 1188 (D.C. Cir. 2009) (quotation omitted). And here, the district court gave Wahlgren's guardian ad litem the authority to conduct an independent investigation and advise the district court regarding several key matters in the dissolution proceeding, including property division, debt allocation, and spousal maintenance. Because Wahlgren has a significant liberty interest in maintaining personal control over her own strategies and decisions in the dissolution proceeding, we note that our reading of the rule is consistent with the requirements of due process. *See Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S. Ct. 893, 909 (1976) (noting that due process generally requires adequate notice and the opportunity to be heard).

Considering the text of rule 17.02, in light of its historical context and purpose, we conclude that notice and an opportunity for a hearing are fundamental steps that a district court must take before appointing a guardian ad litem. And while those steps may not be required in very limited circumstances under rule 17.02, we conclude that notice and an opportunity for a hearing are always required when an adverse party seeks appointment of a guardian ad litem for a party who is not an infant and who has never been previously adjudicated as incompetent.[5] Our conclusion is consistent with current probate-court

[5] Our conclusion here does not limit a party's ability to request or stipulate to the appointment of a guardian ad litem without notice and a hearing.

procedure and scholarship considering rule 17.02. *See* Minn. Stat. § 524.5-308(a) (2018) (requiring notice be provided to the individual for whom a guardian is sought and stating that "failure to serve the respondent with a notice substantially complying with this paragraph precludes the court from granting the petition" for guardianship); 1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 17.7, at 609 (6th ed. 2017) (noting that "[i]f the application for appointment [of a guardian ad litem] is made by any other person, *or by an adverse party in the litigation* or the adverse party's lawyer, notice must be given to all parties" (emphasis added)).

Here, the district court missed those fundamental steps. Despite the fact that husband, the adverse party, sought appointment of a guardian ad litem for wife—who had never been adjudicated to be incompetent—wife was not provided with notice or an opportunity for a hearing before the district court appointed a guardian ad litem. And because this lack of process was contrary to the procedure set out in rule 17.02, read as a whole and in light of its history, we reverse the appointment.[6]

D E C I S I O N

The protections offered by the appointment of a guardian ad litem for infants or incompetent persons ensure that the interests of that person are sufficiently represented and considered. But rule 17.02 of the Minnesota Rules of Civil Procedure requires notice and the opportunity for a hearing when an adverse party seeks appointment of a guardian ad

[6] Because we reverse the appointment of the guardian ad litem on the basis of the requirements of rule 17.02, we do not reach wife's arguments regarding the sufficiency of the findings made by the district court.

litem for a party in a suit never previously determined to be incompetent. Accordingly, when an adverse party requests the appointment of a guardian ad litem for a party who is not an infant and has never been adjudicated incompetent, rule 17.02 entitles the party to notice and an opportunity for a hearing before a guardian ad litem is appointed. Because that procedure was not followed here, we reverse.

Reversed.