

STATE OF MINNESOTA
IN COURT OF APPEALS

A24-0133

FILED

December 11, 2024

**OFFICE OF
APPELLATE COURTS**

In re the Conservatorship Xavier Robert
York-Tallman.

ORDER OPINION

Ramsey County District Court
File No. 62-PR-23-991

Considered and decided by Bentley, Presiding Judge; Segal, Chief Judge; and
Johnson, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Tamara York-Tallman is the mother of respondent Xavier Robert York-Tallman. In October 2023, Tamara filed a petition for conservatorship over Xavier,¹ seeking appointment as her adult son's conservator. In an amended petition, Tamara claimed that Xavier requires a conservator because he has a learning disability, a history of behavioral and mental-health issues and chemical dependency, and difficulty performing certain executive functioning tasks. She also sought to have NeuBeing Treasure L.L.C., a company with a Sheridan, Wyoming address, appointed as co-conservator.

¹ We use the parties' first names for clarity due to their shared last name.

2. The district court appointed an attorney for Xavier pursuant to Minnesota Statutes section 524.5-406(b) (2022). Subsequently, Xavier sent a signed and notarized letter to the attorney stating, “You are fired.” The district court never issued an order discharging Xavier’s attorney and the attorney appeared at the hearing on the petition without objection from either Xavier or Tamara.

3. The district court held the hearing on the conservatorship petition via remote technology on December 12, 2023. At the hearing, Tamara indicated that she was pursuing a conservatorship because Xavier’s Social Security benefits stopped when he turned 18, and Xavier wanted her to apply on his behalf for a continuation of those benefits. Tamara advised the court that the Social Security representatives would not talk with her unless she was declared a conservator of Xavier by a court order.

4. Xavier indicated he agreed to the conservatorship, but Xavier’s attorney expressed concern. The attorney suggested that there may be less-restrictive means available to restart Xavier’s Social Security benefits. The district court then apparently had an off-the-record discussion with the attorney, out of the presence of Tamara and Xavier. When the parties returned and the record restarted, the district court directed Tamara to provide a background study, to which Tamara replied, “Okay.”

5. On December 20, the district court issued an order dismissing Tamara’s conservatorship petition, without prejudice, “due to failure to complete background studies.” Tamara now appeals that dismissal, claiming that the district court erred in dismissing her petition because she is not subject to the background-study requirement. She also argues that Xavier’s attorney did not have the right to ask for a background study

because the attorney was fired by Xavier. And Tamara contends that the district court’s ruling interferes with her constitutional rights as Xavier’s parent, even though Xavier was 18 and no longer a minor when she filed the petition, and that Xavier is the “property” of the Tamara York-Tallman family trust.

6. In conservatorship proceedings, a district court is generally required to order that a background study be conducted on every proposed conservator before they are appointed. Minn. Stat. § 524.5-118, subd. 1(a)(1), (c) (2022). However, this requirement does not apply if the proposed “conservator is . . . a parent or guardian of a person proposed to be subject to . . . conservatorship who has a developmental disability, if the parent or guardian has raised the person proposed to be subject to . . . conservatorship in the family home until the time the petition is filed.” *Id.*, subd. 1(f)(2) (2022). If this exemption applies, the background-study requirement may still be imposed if “counsel appointed for the person proposed to be subject to . . . conservatorship . . . recommends a background check.” *Id.* There is no comparable exemption for the co-conservator proposed by Tamara, NeuBeing Treazure.

7. Tamara’s argument that she is exempt from the background-study requirement was asserted for the first time on appeal. She did not object to a background study before the district court. Instead, when the district court directed her to obtain a background study, she responded, “Okay.” Consistent with our general practice, we decline to address this issue for the first time on appeal. *See Hoyt Inv. Co. v. Bloomington Com. & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) (noting that “an undecided

question is not usually amenable to appellate review”); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

8. Turning to Tamara’s argument that the attorney lacked authority to request a background study, the record does not reflect whether the attorney made such a request. And, even if the attorney did request a background study, it does not appear from the record that the district court had removed the attorney. A respondent in a conservatorship proceeding has a statutory right to counsel. Minn. Stat. § 524.5-406(b). “[T]he court may remove a court-appointed attorney at any time if the court finds that the respondent has made a knowing and intelligent waiver of the right to counsel or has obtained private counsel.” Minn. Stat. § 524.5-406(c)(3) (2022). Thus, while Xavier attempted to discharge the attorney through a letter, there is no record that the district court removed the attorney. Because of the lack of clarity in the record and the fact that Tamara failed to object to the participation of the attorney before the district court, we are not able to review this argument. *See Hoyt*, 418 N.W.2d at 175; *Thiele*, 425 N.W.2d at 582.

9. As to Tamara’s arguments that requiring a background check to appoint her as conservator would interfere with her constitutional right as a parent, she also failed to assert this argument before the district court, and she cites no legal authority for this argument. In addition, she fails to address the fact that Xavier was 18 and no longer a minor at the time she filed her petition. *See, e.g.*, Minn. Stat. § 645.451, subs. 2, 6 (2022) (defining for the purposes of the Minnesota Statutes that a minor is an “individual under the age of 18” and that “[l]egal age” or “full age” means 18 years of age or older). We thus decline to address this argument. *Thiele*, 425 N.W.2d at 582; *Melina v. Chaplin*, 327

N.W.2d 19, 20 (Minn. 1982) (providing that inadequately briefed issues are not properly before an appellate court).

10. For the same reasons—failure to assert the argument before the district court and inadequate briefing—we decline to address Tamara’s argument that the district court could not require a background check because Xavier is the “property” of her trust. *Thiele*, 425 N.W.2d at 582; *Melina*, 327 N.W.2d at 20. Even if we were to address it, we would reject it on its face—Xavier cannot be the “property” of a trust.

11. Finally, we note that the district court dismissed Tamara’s petition without prejudice, meaning she can refile a petition at any time.

IT IS HEREBY ORDERED:

1. The district court’s order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 12/11/24

BY THE COURT



Chief Judge Susan L. Segal