

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 53837-2026

FRANK ELLMAN,	)	
	)	
Petitioner-Appellant,	)	Boise, August 2026 Term
	)	
v.	)	Opinion filed: October 20, 2026
	)	
JULIET CHARRON, in her official capacity	)	Melanie Gagnepain, Clerk
as Director of the Idaho Department of	)	
Health and Welfare,	)	
	)	
Respondent.	)	
	)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Joseph Borton, District Judge.

The decision of the district court is affirmed.

Frank Ellman, Coeur d’Alene, for Appellant Pro Se. Frank Ellman argued.

Raúl R. Labrador, Idaho Attorney General, Boise, for Respondent. Aaron M. Green argued.

ZAHN, J.

Frank Ellman appeals the district court’s decision denying his petition for a writ of mandate, seeking an order compelling the Director of the Idaho Department of Health and Welfare to issue a final order regarding its recommendation, made in a Kootenai County Child Protection Act (“CPA”) case, that Ellman’s three grandchildren be permanently placed with a non-relative foster parent instead of Ellman. Ellman sought the final order so he could file a petition for judicial review of the placement recommendation in a different court. The district court denied Ellman’s petition after determining that (1) it lacked subject matter jurisdiction to take action related to the CPA case, (2) Ellman lacked standing to challenge actions taken in the CPA case, and (3) Ellman could not establish that the Director had a mandatory duty to issue a final order and therefore failed to establish an entitlement to a writ of mandate.

For reasons discussed below, we affirm the district court's decision because it correctly concluded that it lacked subject matter jurisdiction over Ellman's petition. The substance of Ellman's writ petition sought a final order so he could challenge the Department's permanency placement recommendation in a court other than the one handling the CPA case. The CPA granted the Kootenai County magistrate court exclusive jurisdiction over the CPA case, including any challenge to the Department's permanency placement recommendation filed in that case.

Although we affirm the district court's decision that the Kootenai County magistrate court retained exclusive subject matter jurisdiction over issues related to the Department's recommendation, we disagree with the State's assertion that Ellman is categorically precluded from filing a motion for limited intervention in the CPA proceeding, concerning whether the Department complied with the CPA in making its recommendation. As we explain below, while Ellman may seek to intervene in the CPA case, the magistrate court retains discretion whether to allow Ellman to intervene so he can challenge the Department's compliance with Idaho Code section 16-1629(11).

I. FACTUAL AND PROCEDURAL BACKGROUND

The following facts are gleaned from the parties' briefing and documents contained in the record on appeal. Ellman is the maternal grandfather of three minor children who were removed from their mother's home in Kootenai County. A CPA case was initiated against his daughter and a Kootenai County magistrate judge placed the children in the custody of the Department. The Department then placed the children with a non-relative foster parent. Ellman subsequently obtained a license to operate a foster family home and requested the Department place the children in his custody. The Department declined to do so. Neither party to this appeal requested this Court take judicial notice of the record in the CPA proceeding. As a result, we cannot tell from the record on appeal why the Department declined to place the children in Ellman's custody.

Ellman alleges that, in November 2025, the Department "verbally informed [Ellman] that placement was denied, and further, that an Idaho Department of Health and Welfare Permanency Committee selected the non-relative foster parent as permanent placement." Ellman requested a review of the Department's recommendation. In January 2026, the Department verbally informed him that the Permanency Review Committee affirmed the decision of the Permanency Committee.

Ellman then submitted a public records request to the Department, seeking a copy of a final order that detailed the Department's findings of fact and conclusions supporting the Permanency

Committee's decision. The Department advised Ellman that his request for an "extended placement review" was being processed and he should receive a report the following week. Ellman responded that he did not want a report but was instead requesting a final order pursuant to the Idaho Administrative Procedure Act ("APA"). The Department responded that its placement recommendation was not a final agency action because it was a "planning contingency."

Ellman subsequently filed a petition for a writ of mandate in Ada County District Court, alleging that the Permanency Committee's decision constituted a final agency action under the APA and therefore, the Department was required to issue a final order that included its findings of fact and conclusions of law. Ellman requested that the district court issue a writ of mandate compelling the Director to issue a final order so Ellman could seek judicial review of the Permanency Committee's decision in district court. Ellman also requested a preliminary injunction staying further action in the Kootenai County CPA case until he was able to obtain judicial review.

While Ellman's writ petition was pending in Ada County, the Department filed a petition for termination of parental rights in the Kootenai County CPA case. This prompted Ellman to file a motion in the Ada County writ case, requesting the district court to issue an expedited ruling on his petition. After nine days had passed, and the Ada County district court had not issued a decision on his motion or the petition, Ellman filed a Verified Petition for Writ of Mandate and Emergency Request for Injunctive Relief with this Court, seeking an order directing the Ada County district court to rule on his writ petition. The district court subsequently indicated that it did not believe it could issue a decision on Ellman's writ petition while Ellman's subsequent petition to this Court was pending. This Court then issued a writ of mandate to the district court, ordering it to rule on Ellman's original petition and temporarily staying the Kootenai County CPA case for fourteen days.

The district court subsequently issued a written decision denying Ellman's petition for a writ of mandate. Ellman timely filed this appeal.

II. ISSUES ON APPEAL

1. Whether the district court erred when it concluded it lacked subject matter jurisdiction to consider Ellman's petition for a writ of mandate.
2. Whether Ellman's procedural due process rights were violated.

III. ANALYSIS

Ellman argues the district court erred when it denied his petition because the district court incorrectly relied on the CPA to determine it lacked subject matter jurisdiction. Ellman alleges that

he is not seeking to challenge any decision made pursuant to the CPA but instead is seeking a final order under the APA. Ellman contends that, because he was not challenging any decision made in the CPA proceeding, the district court had subject matter jurisdiction to consider his writ petition and to decide his claim arising under the APA. Ellman additionally asserts that the Department's refusal to issue a final order, combined with the district court's dismissal of his petition, violates his procedural due process rights because it deprives him of the ability to seek judicial review of the Department's permanency placement recommendation. For the reasons discussed below, we affirm the district court's decision that it lacked subject matter jurisdiction to consider Ellman's petition.

A. The district court correctly concluded that it lacked subject matter jurisdiction because Ellman's petition concerned the Department's recommendation made in the CPA proceeding and the Kootenai County magistrate court retained exclusive jurisdiction over matters in that case.

1. The CPA grants the CPA court exclusive subject matter jurisdiction over review of the Department's permanency placement recommendation.

The Ada County district court concluded that it lacked subject matter jurisdiction to consider Ellman's writ petition because, pursuant to Idaho Code section 16-1603, the Kootenai County magistrate court retained exclusive original jurisdiction over the CPA proceeding concerning the children. Citing Idaho Code section 16-1629(8), the district court also noted that the decision where to place the children is "subject to judicial review by the court" with jurisdiction over the CPA case. Reading these sections together, the district court concluded that judicial review of the Department's placement recommendation in a CPA case is restricted to the court overseeing the CPA case. Therefore, the district court lacked subject matter jurisdiction to enter an order compelling the Department to issue a final order that would permit Ellman to ask a different court to review the Department's placement recommendation.

Issues of subject matter jurisdiction are questions of law that are freely reviewed. *Slavens v. Slavens*, 161 Idaho 198, 202, 384 P.3d 962, 965 (2016). Ellman argues the district court erred because it misconstrued the relief sought in the writ petition. He asserts that he sought a writ of mandate requiring compliance with the APA, not judicial review of any decision in the CPA case. Additionally, Ellman asserts that Idaho Code section 7-302 grants the district court subject matter jurisdiction over petitions seeking issuance of a writ of mandate.

The district court did not err in dismissing Ellman's petition. Regardless of how he describes his claims, the relief Ellman seeks is an order that would permit him to seek judicial

review of the Department’s placement recommendation for the children. The plain language of the CPA restricts review of these matters to the magistrate court presiding over the CPA case. Idaho law is clear that the child protection court retains exclusive subject matter jurisdiction over *all* matters relating to children that are the subject of the CPA proceeding. I.C. § 16-1603(1)(a) (“Except as otherwise provided herein, the court shall have exclusive original jurisdiction in all proceedings under this chapter concerning any child living or found within the state: (a) [w]ho is neglected, abused or abandoned by his parents, guardian or other legal custodian[.]”). This includes review of the Department’s consideration of options for the children’s permanency placement. I.C. § 16-1622(2)(d). Accordingly, if Ellman’s requested writ concerns an issue related to his grandchildren that are the subject of the pending CPA case, the Kootenai County magistrate court has exclusive jurisdiction over that issue.

We look to the substance of Ellman’s claim to ascertain whether it concerns an issue within the exclusive jurisdiction of the child protection court. *See Carelon Behav. Health, Inc. v. State ex rel. Idaho Dep’t of Admin.*, 176 Idaho 631, ___, 581 P.3d 298, 307–08 (2025). While Ellman asserts that he only seeks compliance with the APA, not custody of his grandchildren or intervention in the pending CPA case, his opening brief makes clear that he seeks a final order so he can obtain judicial review of the Department’s permanency placement recommendation:

Appellant respectfully requests that this Court reverse the district court’s March 11, 2026 order dismissing his Verified Petition for Writ of Mandate and remand with instructions to issue a peremptory writ of mandate directing the Director of the Idaho Department of Health and Welfare to issue a written final agency order consistent with Idaho Code [section] 67-5248 and Idaho Code [section] 16-1629(11), *sufficient to permit judicial review*.

(Emphasis added.)

Of the two statutes Ellman cites in his opening brief, the first is inapplicable and the second reveals the substance of what he seeks: the ability to challenge the Department’s permanency placement recommendation in a different court. The first statute, Idaho Code section 67-5248, is part of the APA and is entitled, “Contents of Orders.” It does not address whether the Department is required to issue an order when it makes a recommendation in a CPA proceeding. Instead, it identifies what must be included in an agency order.

The second statute, Idaho Code section 16-1629(11), is part of the CPA and sets forth the Department’s duties related to the protection of children. Subsection (11) addresses the Department’s obligations related to the placement of children subject to the CPA:

(11) At any time the department is considering a placement pursuant to this chapter, the department shall make a reasonable effort to place the child in the least restrictive environment to the child and in so doing shall consider, consistent with the best interest and special needs of the child, placement priority of the child in the following order:

- (a) A fit and willing relative;
- (b) A fit and willing nonrelative with a significant relationship with the child;
- (c) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code, with a significant relationship with the child;
- (d) Foster parents and other persons licensed in accordance with chapter 12, title 39, Idaho Code.

I.C. § 16-1629(11).

Ellman asserts that he “does not seek custody, visitation, or intervention in a child protection action.” However, he does seek review of the Department’s compliance with section 16-1629(11): “Appellant seeks only a written, reviewable agency decision sufficient to permit judicial review of compliance with statutory placement obligations.” The substance of Ellman’s claim is that he wants to seek judicial review of the Department’s permanency placement recommendation, which did not recommend Ellman as the children’s permanent placement. However, that issue concerns the Department’s compliance with the CPA and its recommendation made in a specific CPA case. Under section 16-1603, the Kootenai County magistrate court presiding over the children’s CPA case retains exclusive jurisdiction over both issues.

The court presiding over a CPA case is required to periodically hold hearings according to prescribed timeframes so it can review the child’s case and permanency plan. I.C. § 16-1622(1)(a). The CPA defines a “permanency plan” as “a plan for a continuous residence and maintenance of nurturing relationships during the child’s minority.” I.C. § 16-1602(34). The permanency plan must include a permanency goal, which can include: (1) continued efforts at reunification, (2) termination of parental rights and adoption, (3) guardianship or (4) another planned living arrangement if the children are age 16 or older. I.C. § 16-1622(2)(a). If the permanency goal is termination of parental rights, then the permanency plan must include a recommendation for a permanent placement for the child. *Id.*; I.C. § 16-1621(3)(d). After reviewing the Department’s permanency plan, the court approves, rejects, or modifies the permanency plan. I.C. § 16-1622(2)(b). The permanency plan, as approved by the court, is entered as an order of the court. *Id.*

Ellman concedes that, through judicial review, he seeks to challenge whether the Department complied with Idaho Code section 16-1629(11) in making its permanency placement recommendation. That Ellman's writ petition is only the first step in seeking judicial review by a different court does not change the fact that the substance of what he seeks is to challenge the Department's recommendation filed in the CPA case. The CPA is clear that exclusive jurisdiction over that issue lies with the Kootenai County magistrate court presiding over the CPA case. As a result, the district court did not err when it concluded it lacked subject matter jurisdiction over Ellman's writ petition, and we affirm its decision on that point.

Although Ellman appears to assert that the APA provides an independent basis for review, the APA actually defers to the CPA in this instance. Idaho Code section 67-5270 provides that judicial review of agency action is governed by the APA unless another provision of law is applicable. I.C. § 67-5270(1). Here, Ellman ultimately seeks to challenge the Department's compliance with section 16-1629(11), which is part of the CPA, and to challenge the Department's permanency placement recommendation filed in a pending CPA case concerning his grandchildren. Because his challenge concerns the Department's compliance with the CPA in a pending CPA proceeding, section 16-1603(1) applies here. The CPA controls over any competing provisions of the APA. *See* I.C. § 67-5270(1). As previously discussed, section 16-1603(1) vests the Kootenai County magistrate court with exclusive jurisdiction over Ellman's arguments concerning the Department's compliance with section 16-1629(11).

Our holding today is also consistent with the CPA's stated purpose to "[t]ake such actions as may be necessary to provide the child with permanency including concurrent planning[.]" I.C. § 16-1601(3). To that end, the CPA provides that, "if [a] child has been in the temporary or legal custody of the department for twelve (12) of the most recent twenty-two (22) months, the department shall file, prior to the last day of the twelfth month, a petition to terminate parental rights" unless the court makes certain findings. I.C. § 16-1622(2)(g). Based on the dates alleged in Ellman's petition, Idaho law required the Department to file a petition for termination. Permitting Ellman to seek review of the Department's recommendation in an entirely different court would only delay providing the children with permanency in a timely manner.

Allowing Ellman to seek judicial review of the Department's permanency placement recommendation in a different court would likely add months or years to the review process. A judicial review process would: (1) require the Department to hold a contested case hearing before

making its recommendation; (2) require preparation of a record and transcript concerning the contested case; (3) require a briefing schedule for the parties to present written argument to the district court; (4) require a hearing so the parties could present argument to the district court; (5) require the district court to prepare a written order deciding the petition for judicial review; and (6) possibly require repeating steps 2 to 5 if one of the parties decided to appeal the district court's decision to this Court. In short, our decision today applies the plain language of the CPA, is consistent with the APA, and advances the legislative purposes of the CPA.

Despite Ellman's arguments to the contrary, nothing in our statutory framework concerning writs of mandamus changes this result. Ellman asserts that, regardless of what the CPA provides, the district court retains subject matter jurisdiction under Idaho Code section 7-302. That code section addresses when courts may issue writs of mandamus. It does not state that it overrides any other provision of law or otherwise allows the district court to ignore the exclusive jurisdiction granted by section 16-1603.

Ellman asserts that, if we affirm the district court, he will be deprived of the ability to seek judicial review of the Department's permanency placement recommendation concerning his grandchildren. This argument is unpersuasive because the CPA provides for judicial review of the Department's recommendation. The permanency plan, including the permanency placement recommendation, is subject to judicial review and approval by the magistrate court presiding over the CPA case. I.C. § 16-1622(2)(b).

The Department's placement recommendation is merely that—a recommendation to the magistrate court. *See id.* It is the magistrate court that determines whether the Department's permanency placement recommendation is appropriate and in the best interest of the children, in which case it accepts the recommendation and enters it as an order of the court. *Id.* The magistrate court's consideration of the Department's recommendation can include inquiring of the Department concerning its compliance with section 16-1629(11).

2. *Ellman is not precluded from filing a motion for limited intervention concerning the Department's compliance with section 16-1629(11), but the magistrate court retains discretion whether to permit intervention and the scope of any intervention.*

The essence of Ellman's argument here is that he is personally entitled to challenge the Department's permanency plan recommendation. This is clear from Ellman's argument that he must have a right to judicial review of the Department's recommendation under the APA because he is not a party to the CPA case and therefore cannot challenge the Department's recommendation

in that proceeding. In response, the Director contends that Ellman has no right to challenge the Department's permanency placement recommendation. The Director asserts that the lack of review reflects a deliberate choice by the legislature, and Ellman cannot use the APA to make an "end-run around" the legislature's decision to not provide a mechanism for relatives to seek judicial review of the Department's recommendation. Relying on this Court's decision in *Roe v. State (In re Doe)*, 134 Idaho 760, 9 P.3d 1226 (2000), the Director contends this Court "has expressly found that [Ellman] lacks a right to participate" in the CPA case.

We agree that the CPA does not expressly provide Ellman a right to seek judicial review of the Department's permanency placement recommendation. The CPA provides that, when legal custody of a child is vested in the Department, "any party or counsel for a child may . . . file and serve a written motion to contest matters relating to the placement of the child by the department." I.C. § 16-1619(11). Ellman concedes he is not a party to the CPA case and therefore, the CPA does not provide him a right to file a motion contesting the Department's permanency placement recommendation.

However, we disagree with the Director's contention that our decision in *Roe* precludes Ellman from filing a motion for permissive intervention in the CPA case. The Director argues that in *Roe*, we held that a grandmother did not have a right to intervene in a CPA proceeding because "[a] CPA action is not intended to provide a forum for multiple claimants to litigate their right to custody." (Alteration in original; quoting *Roe*, 134 Idaho at 767, 9 P.3d at 1233.) While the Director is correct concerning what we decided in *Roe*, we conclude that our decision is no longer applicable in light of subsequent legislative amendments to the CPA.

Roe concerned a grandmother's appeal of a magistrate court order denying her motion for permissive intervention in a CPA case concerning her grandchild. *Id.* at 762, 9 P.3d at 1228. The grandmother sought intervention to argue that the magistrate court should give her custody of the child rather than giving custody to the child's biological father. *Id.* The grandmother asserted that she was entitled to custody under section 16-1629(k) and therefore she had a right to intervene to assert her rights under the statute. *Id.* at 764, 9 P.3d at 1230. Section 16-1623(k) has since been amended and recodified as Idaho Code section 16-1629(11). *See* Act of Apr. 14, 2005, ch. 391, § 31, 2005 Idaho Sess. Laws 1261, 1288–89. This is the same code section that Ellman cites here as the basis on which he would seek judicial review of the Department's recommendation in his grandchildren's CPA case.

In *Roe*, we held that the CPA did not provide the grandmother a conditional right to intervene because the CPA gave the Department the affirmative right to determine where the child would live, and the Department's decision was not subject to judicial review. 134 Idaho at 765, 9 P.3d at 1231. Further, we recognized that section 16-1623(k) only required the Department to consider related persons as an option for placement, but did not mandate that the Department place the children with relatives. *Id.* at 764, 9 P.3d at 1230. Given the statutory language, this Court concluded that the statute did not create a permissive right for relatives to intervene in the CPA proceeding. *Id.* at 764, 768; 9 P.3d at 1230, 1234.

However, subsequent amendments to the CPA have undermined our holding. Following our decision in *Roe*, the Idaho legislature amended the CPA in 2013 to remove the Department's ability to determine the child's permanent placement. The amendments required the magistrate court to approve, modify, or reject the Department's permanency plan, including its recommendation for where the children should live. *Compare* Act of Apr. 14, 2005, ch. 391, § 22, 2005 Idaho Sess. Laws 1263, 1282–83, *with* Act of Apr. 9, 2013, ch. 287, § 4, 2013 Idaho Sess. Laws 741, 747–48. As previously discussed, the magistrate court now determines the children's permanent placement. *See* I.C. § 16-1620(4), (6). So, to the extent that *Roe* held that a grandparent did not have a right to permissive intervention because the Department made the decision concerning the child's permanent placement, that premise no longer holds true.

Additionally, following our decision in *Roe*, the legislature enacted a new section in the CPA concerning attendance at CPA hearings. *See* Act of Mar. 22, 2001, ch. 107, § 7, 2001 Idaho Sess. Laws 350, 358 (current version at I.C. § 16-1613). Idaho Code section 16-1613 excludes the general public from attending hearings in CPA cases. I.C. § 16-1613(1). However, it also provides an exception to this general rule. Those who are “found by the court to have a direct interest in the case” may attend these hearings. *Id.* The statute thus provides a basis for individuals asserting a direct interest in a CPA case to file a motion to intervene. It is then up to the court presiding over the CPA case to make factual findings concerning whether the movant has a direct interest in the case.

These legislative amendments and enactments undermine the basis for our holding in *Roe* concerning the availability of permissive intervention. As a result, we hold that the permissive intervention holding in *Roe* is no longer applicable in light of the legislative actions following our decision in that case.

Nevertheless, this opinion should not be read as holding that Ellman has an absolute right to intervene in the Kootenai County CPA proceeding. We stand by our statement in *Roe* that the legislature did not intend for CPA cases to become a forum for custody battles. 134 Idaho at 767, 9 P.3d at 1233. We only hold that, in light of subsequent changes to the CPA, Ellman is not precluded from filing a motion for permissive intervention. However, the decision whether to permit intervention, and the scope of any intervention, is left to the discretion of the CPA court. *Id.* at 763, 9 P.3d at 1229.

Finally, we reiterate our statement in *Roe* that nothing in the plain language of section 16-1629(11) grants Ellman a right to custody of his grandchildren. While section 16-1629(11)(a) requires the Department to *consider* fit and willing relatives for placement, consistent with the best interest and special needs of the child, it does not mandate that the Department *place* children with relatives. Depending on the information contained in the Department's permanency plan and the other evidence presented in the CPA case, Ellman may be able to establish a direct interest in the CPA case for purposes of assuring the Department's compliance with section 16-1629(11) when making its permanency placement recommendation. Even then, however, the CPA court retains discretion whether to permit Ellman to intervene on a limited basis, for purposes related to the Department's statutory compliance with section 16-1629(11). It is entirely possible that the CPA court could already have sufficient information to assess the Department's statutory compliance.

B. Ellman's procedural due process rights were not violated.

Ellman also asserts that the combined effect of the Department's refusal to issue a final order and the district court's refusal to issue a writ of mandate amounts to a violation of his procedural due process rights. However, Ellman's assertion is without merit.

Procedural due process is a right guaranteed by the Fourteenth Amendment of the United States Constitution. U.S. Const. amend XIV, § 1. This right requires notice and a hearing prior to the deprivation of a life, liberty, or property interest. *Telford v. Nye*, 154 Idaho 606, 611, 301 P.3d 264, 269 (2013). Protected interests arise either from the Due Process Clause of the United States Constitution or from state law. *Ky. Dep't of Corrs. v. Thompson*, 490 U.S. 454, 460 (1989). Ellman, however, has failed to establish any protected liberty or property interest as he has not pointed to a constitutional or statutory right to the custody or placement of his grandchildren during the pendency of their CPA case. Consequently, Ellman has failed to establish a violation of his right to procedural due process.

IV. CONCLUSION

For the reasons discussed herein, we affirm the district court's decision dismissing Ellman's petition for a writ of mandamus.

Justices BEVAN, MOELLER, and MEYER, and Pro Tem Justice BURDICK CONCUR.