

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A17-0348

A17-0352

A17-0353

In the Matter of the Welfare of the Children of:
C. A. G. and J. E. C., Parents (A17-0348),

In the Matter of the Welfare of the Child of:
C. A. G. and D. M., Parents (A17-0352),

In the Matter of the Welfare of the Child of:
C. A. G. and T. J. P., Parents (A17-0353).

Filed August 21, 2017

Affirmed

Smith, Tracy M., Judge

Olmsted County District Court
File Nos. 55-JV-16-1584, 55-JV-16-1586, 55-JV-16-1591

Michael D. Schatz, Donnelly Law Office, Rochester, Minnesota (for appellant mother C.A.G.)

Frederick S. Suhler, Jr., Rochester, Minnesota (for respondent father J.E.C.)

Kimbal G. Orwoll, Rochester, Minnesota (for respondent father D.M.)

Janet Hulsizer Krueger, Rochester, Minnesota (for respondent children C.C., J.C., C.A.M. and W.C.)

Mark A. Ostrem, Olmsted County Attorney, Michael E. Davis, Associate County Attorney, Rochester, Minnesota (for respondent Olmsted Community Services)

T.J.P., Red Wing, Minnesota (pro se respondent father)

Vicki Duncan, Rochester, Minnesota (guardian ad litem)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

In these consolidated appeals, appellant-mother C.A.G. challenges the termination of her parental rights (TPR) to four of her children. With respect to all four children, C.A.G. argues that the district court violated her statutory right to counsel by not appointing replacement counsel and granting a continuance after her court-appointed attorney withdrew based on C.A.G.'s complaints about his representation days before trial. In addition, with respect to her son W.C., C.A.G. argues that the district court abused its discretion in determining that a statutory basis for termination exists and that termination is in W.C.'s best interests. Because the district court did not violate C.A.G.'s statutory right to counsel by proceeding with trial as scheduled without appointing new counsel, and because the district court did not abuse its discretion in terminating C.A.G.'s parental rights to W.C., we affirm.

FACTS

C.A.G. is the mother of the four children involved in this TPR case. The children have different fathers: J.C. (age 15) and C.C. (age 14) are the sons of J.E.C.; C.M. (age 12) is the daughter of D.M.; and W.C. (age 7) is the son of T.J.P.

In November 2015, respondent Olmsted County Community Services (the county) filed a petition to determine J.C., C.C., C.M., and W.C. to be children in need of protection or services. The children were removed from C.A.G.'s custody on January 27, 2016, after

J.C. told a social worker at school that C.A.G. had choked him. W.C. was placed in the care of J.E.C., along with his half-brothers, J.C. and C.C. The county filed a TPR petition and began permanency proceedings. The one-year deadline to complete the permanency proceedings was January 28, 2017. *See* Minn. R. Juv. Prot. P. 4.03, subd. 2(b).

The district court appointed counsel for C.A.G. in January 2016. C.A.G. complained about her initial counsel and, in April 2016, wrote a letter to the district court requesting a new lawyer and suggesting that she intended to report counsel for violation of professional rules. Responding to C.A.G.'s request, the district court discharged her court-appointed counsel because he was not on the roster of qualified attorneys to represent parents in juvenile-protection matters. On April 26, the district court appointed a new attorney to represent C.A.G. In June, the district court granted this second attorney's request for a continuance to prepare for trial. Trial was scheduled for October, but, after T.J.P.'s counsel's request for a continuance, was rescheduled for December 12.

On December 6—six days before trial—C.A.G. e-mailed her attorney, complaining about the quality of his representation:

I 100% believe you cannot represent me diligently in this matter. You have not pursued matters brought to your attention despite your opposition, obstruction or personal inconvenience to date (Rules of Professional Conduct: Rule 1.3 Diligence). You have not dealt with any situation over the course of your appointment [Y]our preparation and thoroughness is questionable.

C.A.G. asserted that counsel had violated professional rules and stated that she would be writing to the district court and was in contact with the Department of Human Services Inspector General.

C.A.G.'s attorney moved to withdraw as counsel on December 7. At a hearing on the motion that same day, the attorney told the district court that he believed that C.A.G. wanted him to withdraw and that he could not continue to represent her as a result of the allegations against him. The district court asked C.A.G. three times what her plan was for trial and what she wanted the court to do. C.A.G. responded with phrases such as "I don't know what to say" and "I have no idea." The court granted the attorney's withdrawal motion and gave C.A.G. the option to either represent herself or retain counsel before trial started.

C.A.G. e-mailed the court on December 8, claiming that she had found an attorney who agreed to represent her and seeking a continuance to provide this third attorney time to prepare. The district court denied her request. C.A.G. again e-mailed the district court on December 11, requesting a continuance. The district court denied this request on December 12 because the one-year permanency deadline was approaching and it believed that no new attorney could prepare for trial with even a two-week continuance. C.A.G.'s new attorney did not appear on December 12 for the start of trial. C.A.G. represented herself throughout the remainder of the proceedings.

Relevant to this appeal, the district court terminated C.A.G.'s parental rights to W.C. after determining that four statutory bases for termination exist and that termination is in the child's best interests. The four statutory bases are that (1) C.A.G. failed to satisfy the duties of the parent-child relationship, (2) she is palpably unfit to be a party to the parent-child relationship, (3) the children are neglected and in foster care, and (4) one of the

children suffered egregious harm in her care. *See* Minn. Stat. § 260C.301, subds. 1(b)(2), (4), (6), (8) (2016).

C.A.G. appeals.

DECISION

I. The district court did not violate C.A.G.’s statutory right to counsel.

C.A.G. argues that the district court violated her statutory right to counsel by not appointing a third attorney and not granting a continuance to allow the new attorney to prepare for trial. The county argues that the district court’s decision not to grant a continuance for the appointment of a third attorney was appropriate in light of the procedural deadlines and the best interests of the children in timely determining permanency.

A parent in a juvenile-protection proceeding has a statutory right to the effective assistance of counsel. Minn. Stat. § 260C.163, subd. 3(a) (2016). But a parent’s right to counsel in juvenile-protection proceedings is not the equivalent of the constitutional right to counsel in criminal proceedings. *In re Welfare of G.L.H.*, 614 N.W.2d 718, 722 (Minn. 2000).¹

In juvenile-protection proceedings, “the best interests of the child must be the paramount consideration.” Minn. Stat. § 260C.301, subd. 7 (2016). The statutes and the Minnesota Rules of Juvenile Protection Proceedings provide strict deadlines for

¹ C.A.G. argued to the district court that it had violated her Sixth Amendment right to counsel, but the Sixth Amendment does not apply to juvenile-protection proceedings. *G.L.H.*, 614 N.W.2d at 722.

commencing and completing permanency proceedings. Minn. Stat. §§ 260C.503, .509 (2016); Minn. R. Juv. Prot. P. 4.03. Permanency proceedings must be completed within 12 months after the child is placed in the home of a noncustodial parent. Minn. R. Juv. Prot. P. 4.03, subd. 2(b). The Minnesota Supreme Court has stated that the timelines in permanency proceedings are “maximum.” *In re Welfare of Child of T.T.B.*, 724 N.W.2d 300, 307 (Minn. 2006). The supreme court has also emphasized that “[e]ach delay in the termination of a parent’s rights equates to delay in a child’s opportunity to have a permanent home and can seriously affect a child’s chance for permanent placement.” *In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 5 (Minn. 2003). The supreme court has further stated, “While we recognize and support due process rights of all parties, we decline the invitation to elevate the parents’ rights at the expense of the child’s.” *Id.*

C.A.G. argues that this case turns on whether she waived the right to counsel and that she did not do so. *Cf. G.L.H.*, 614 N.W.2d at 721 (analyzing waiver of the right to counsel in juvenile-protection proceedings). The county does not argue that C.A.G. waived her right to counsel. Rather, it argues that C.A.G.’s right to counsel did not require the appointment of a third attorney and postponement of the trial. We agree with the county.

C.A.G. was timely appointed counsel and was given substitute counsel upon her request in April. In December, just days before trial, C.A.G. sent her second attorney an e-mail informing him that she was sure he could not represent her diligently. C.A.G. had raised no complaints about him previously. C.A.G. did not oppose her lawyer’s subsequent motion to withdraw and does not argue on appeal that the district court erred in granting it. C.A.G. insisted that she had found an attorney to represent her and sought a continuance.

A district court's ruling on a motion for a continuance will not be reversed absent a showing of an abuse of discretion. *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977).

C.A.G. first sought a continuance on December 8—four days before trial was set to begin. The deadline to complete the permanency proceedings was January 28, 2017. *See* Minn. R. Juv. Prot. P. 4.03, subd. 2(b). The district court concluded that, even if it granted a two-week continuance, no new attorney could be prepared within two weeks given the voluminous discovery in this case. The district court also cited the availability of experts and the schedules of the other parties as an additional reason to deny the continuance. The district court thus denied the continuance and appointment of a third attorney. The district court's decision to deny the continuance to ensure compliance with the procedural deadlines is consistent with Minnesota Supreme Court cases holding that these deadlines are maximum. *T.T.B.*, 724 N.W.2d at 307. In light of this case law, we cannot say that C.A.G.'s statutory right to counsel takes precedence over the deadlines in permanency proceedings for purposes of deciding whether to grant or deny a continuance.

C.A.G. was appointed counsel and given substitute counsel once. She waited until nearly the eve of trial to complain about her second attorney and did not object to his withdrawal. The district court decided, and C.A.G. does not disagree, that a continuance would have been necessary for any new lawyer to prepare for trial. The best interests of the children weighed heavily against delay. We conclude that the district court did not abuse its discretion in denying C.A.G.'s request for a continuance and did not deny C.A.G. her statutory right to counsel by not appointing another substitute counsel in these circumstances.

II. The district court did not abuse its discretion in terminating C.A.G.'s parental rights to W.C.

C.A.G. argues that the district court abused its discretion in terminating C.A.G.'s parental rights to W.C. The district court concluded that termination of C.A.G.'s parental rights was warranted under section 260C.301, subdivisions 1(b)(2), (4), (6), and (8), and in W.C.'s best interests.

A natural parent is presumptively a “fit and suitable person to be entrusted with the care of his or her child,” and “[o]rdinarily, it is in the best interest of a child to be in the custody of his or her natural parents.” *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). As a result, parental rights may be terminated “only for grave and weighty reasons.” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990).

A decision to involuntarily terminate a person's parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014). To terminate parental rights, a district court must determine both that at least one statutory basis for termination exists and that termination is in the best interests of the child. Minn. Stat. § 260C.301, subds. 1, 7 (2016); *R.D.L.*, 853 N.W.2d at 137. Determinations of whether a statutory basis for involuntarily terminating parental rights is present, whether termination is in the best of interest of the child, and whether parental rights should be terminated are reviewed for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901-02, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 16, 2012). A district court abuses its discretion if its underlying findings of fact are clearly erroneous, if it misapplies the law, or if it resolves the matter in a manner that is against logic and the

facts on the record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). In termination proceedings, appellate courts review the district court's underlying findings of fact for clear error, taking into account the clear-and-convincing evidence standard of proof used in juvenile-protection proceedings. *J.R.B.*, 805 N.W.2d at 900-02. A factual finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted).

Egregious Harm

A person's parental rights may be terminated if the district court finds that

a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Minn. Stat. § 260C.301, subd. 1(b)(6). Egregious harm to another child can be grounds for terminating parental rights to a child. *In re the Welfare of A.L.F.*, 579 N.W.2d 152, 155-56 (Minn. App. 1998) (holding that egregious harm experienced by child's half-sister while in father's care was sufficient grounds for terminating father's parental rights to child).

C.A.G. argues that the district court's finding that W.C.'s half-brother, J.C., suffered egregious harm is erroneous, but she does not explain why this finding is erroneous. Nevertheless, we conclude that the district court did not abuse its discretion in determining that J.C. suffered egregious harm.

The district court concluded that J.C. suffered egregious harm because C.A.G. temporarily impaired J.C.'s ability to breathe by choking him. Whether the temporary impairment of the ability to breathe constitutes egregious harm is a question of statutory interpretation reviewed de novo. *In re Welfare Child of R.S.*, 805 N.W.2d 44, 48-49 (Minn. 2011). "Egregious harm" is defined as "infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2016). "Substantial bodily harm" includes bodily injury which "causes a temporary but substantial loss or impairment of the function of any bodily member or organ." *Id.*, subd. 14(2); Minn. Stat. § 609.02, subd. 7a (2016).

We may examine dictionary definitions of relevant terms to determine whether C.A.G.'s choking of J.C. rises to the level of "substantial bodily harm". *State v. Larkin*, 620 N.W.2d 335, 337-38 (Minn. App. 2001) (examining dictionary definitions of "consciousness," "unconsciousness," and "brain" to determine that loss of consciousness is substantial bodily harm). "Choking" means "[t]o interfere with the respiration of by compression or obstruction of the larynx or trachea." *American Heritage Dictionary* 337 (3d ed. 1992). The "trachea" is a tube that "carr[ies] air to the lungs." *Id.* at 1896. J.C.'s breathing was impaired to such an extent that he coughed, had trouble breathing, and his face turned purple. The choking in this case meets the definition of "substantial bodily harm" because it impaired the ability of J.C.'s trachea to carry air to the lungs and caused J.C. to lose the ability to breathe.

We review whether clear and convincing evidence supports the district court's finding that J.C. suffered egregious harm for clear error. *J.R.B.*, 805 N.W.2d at 900-02. The social worker testified that she interviewed J.C. shortly after C.A.G. choked him and that J.C. had bruising on his neck and beneath his eyes. The social worker also testified that J.C. initially claimed that the marks were a rash but eventually stated that C.A.G. had choked him. In this interview, J.C. stated that he coughed, had trouble breathing, and his face turned purple. An expert testified that J.C.'s injuries were consistent with choking and were not the result of a rash. Clear and convincing evidence supports the district court's finding that J.C. suffered egregious harm as a result of choking.

The district court did not abuse its discretion in determining that C.A.G. caused J.C. egregious harm. *See id.* Because one statutory basis for terminating parental rights is affirmable, other bases invoked by the district court to terminate parental rights need not be addressed. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) ("Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child's best interests.").

Best Interests of W.C.

The district court concluded after weighing the relevant factors that it is in W.C.'s best interests that C.A.G.'s parental rights be terminated. We review the district court's determination that termination is in a child's best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 900-02. In determining the best interests of the child, the district court must balance the child's interests in preserving the parent-child relationship, the

parent's interests in preserving the parent-child relationship, and any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). The district court acknowledged that C.A.G. "expressed a strong desire[] to maintain a relationship with W.C." But the district court found that C.A.G.'s interest was outweighed by the best interests of W.C. The district court found that W.C. is "happy," "thriving with his brothers," and attending school and improving his speech and reading. The district court also found that C.A.G. cannot provide W.C. with a stable environment. The district court's findings are supported by the record. The district court did not abuse its discretion in finding that termination of C.A.G.'s parental rights was in W.C.'s best interests.

We therefore conclude that the district court did not abuse its discretion in terminating C.A.G.'s parental rights to W.C. See *J.R.B.*, 805 N.W.2d at 900-02.

Affirmed.