

*This opinion is nonprecedential except as provided by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
A23-1553**

In re the Matter of:

Leah Morgan Oswald, petitioner,
Appellant,

vs.

Jason Christopher Deyo,
Respondent,

Dodge County,
Intervenor.

**Filed August 12, 2024
Affirmed
Reyes, Judge**

Dodge County District Court
File No. 20-FA-20-928

Leah Oswald, Hayfield, Minnesota (self-represented appellant)

Dean K. Adams, Adams, Rizzi & Sween, P.A., Austin, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Florey,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

REYES, Judge

In this parenting dispute, appellant-mother appears to argue that the district court (1) exhibited bias against her and failed to provide her with a sufficient opportunity to be heard; (2) did not grant her an adequate continuance; and (3) violated her procedural due-process rights. We affirm.

FACTS

Appellant-mother Leah Morgan Oswald is the biological mother of T.D., born in August 2017, and B.O., born in April 2019. In August 2017, mother and respondent-father Jason Christopher Deyo executed a recognition of parentage of T.D. Although mother had executed a recognition of parentage of B.O. with another person in August 2019, she filed a petition to vacate that recognition in October 2020 and requested that Deyo submit to genetic testing to determine whether he was the father of B.O. After genetic testing confirmed that Deyo is B.O.'s biological father, and upon Deyo filing an answer admitting paternity, the district court vacated the prior recognition of parentage and adjudicated Deyo as B.O.'s father. The district court reserved the issues of custody and parenting time for B.O.

In August 2022, Deyo (hereinafter, father) moved to be adjudicated T.D.'s father and to be awarded joint legal and joint physical custody of both children. The district court merged the files of both children into one matter and scheduled an evidentiary hearing for April 7, 2023.

On April 3, 2023, mother's counsel filed a notice of withdrawal. Two days later, mother requested that the district court grant her a continuance to find new counsel. The district court granted mother's request and rescheduled the evidentiary hearing to April 24 and 27, 2023. On April 24, mother, who was self-represented for the remainder of the proceedings, requested another continuance due to at least one of the children being ill, which the district court denied. However, after mother failed to appear in person and instead appeared via Zoom with the children, the district court continued the hearing to April 27. On April 27, mother did not appear at the scheduled time for the hearing. Mother did not notify the district court that she would be unable to appear in person; however, she had emailed father's counsel to request to appear via Zoom because the children were still ill. The district court denied mother's request after learning that mother had refused available childcare options and granted father's request to proceed without her present. Eventually, mother appeared in-person with the children and requested another continuance, which the district court denied. After pausing the proceedings to allow a family member to take the children, the district court resumed the evidentiary hearing.

During the hearing, both parties called witnesses and offered exhibits into evidence, including a custody-evaluation report submitted by father. The district court heard testimony from one of the custody evaluators, father's wife, father, mother's friend and the adoptive parent of two of mother's biological children, mother, and father's ex-wife. Mother submitted a closing brief requesting joint physical custody and sole legal custody of the children.

In August 2023, the district court filed an order in which it analyzed the best-interests factors under Minn. Stat. § 518.17 (2022) and granted father sole physical custody, citing concerns regarding the safety and well-being of the children while in mother's care. The district court granted the parties joint legal custody and ordered that mother have parenting time every other week.

This appeal follows.

DECISION

Although mother presents seven issues on appeal, we construe them as three main issues: that the district court (1) exhibited bias against mother and failed to provide her with a sufficient opportunity to be heard; (2) did not grant her an adequate continuance; and (3) violated her procedural due-process rights. We address each issue in turn.

I. The district court did not exhibit bias against mother and provided her with a sufficient opportunity to be heard.

Mother appears to argue that the district court violated the code of judicial conduct because it (1) exhibited bias against her by improperly relying on her diagnosis of borderline personality disorder (BPD) in its order and (2) interfered with her opportunity to be heard by improperly intervening during her testimony. We disagree.

Appellate courts review whether a judge violated the code of judicial conduct de novo. *State v. Dorsey*, 701 N.W.2d 238, 246 (Minn. 2005). We review a district court's procedural and evidentiary rulings for an abuse of discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *rev. denied* (Minn. Oct. 24, 2001). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence,

misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

A. The district court did not exhibit bias against mother.

Mother maintains that the district court exhibited bias against her by not allowing her to rebut her misdiagnosis of BPD or to testify regarding her other concerns.

The Minnesota Code of Judicial Conduct, rule 2.3(A), provides that “[a] judge shall perform the duties of judicial office . . . without bias or prejudice.” Examples of judicial bias or prejudice include “irrelevant references to personal characteristics.” Minn. Code Jud. Conduct Rule 2.3, cmt. 2.

After reviewing the record, we discern no judicial bias or abuse of discretion by the district court. Mother presented the challenged information, testifying that she was diagnosed with BPD in 2020 and cross-examining other witnesses about her diagnosis. Mother never indicated that her BPD was a misdiagnosis. Mother’s argument that the district court prevented her from testifying to clarify that her BPD was a misdiagnosis is refuted by the record. “While [a self-represented appellant] is usually accorded some leeway in attempting to comply with court rules, [they are] still not relieved of the burden of, at least, adequately communicating to the court what it is [they] want[] accomplished and by whom.” *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). The district court repeatedly asked mother whether she had more evidence to present and permitted the parties to submit written closing arguments after the hearing. Mother did not indicate that she needed additional time to testify, and her closing brief did not assert that she was misdiagnosed with BPD.

Mother's contention that the district court relied on her misdiagnosis of BPD in its order is also refuted by the record. The district court noted mother's testimony about her BPD diagnosis only in its analysis of the fifth best-interest factor—"any physical, mental, or chemical health issue of a parent that affects the children's safety or developmental needs." Minn. Stat. § 518.17, subd. 1(a)(5). The district court did not emphasize the diagnosis, but primarily discussed father's and his wife's concern with mother's mental health generally. The district court cited witness testimony that mother was "physically harsh" with the children, "extremely angry" about father's involvement in her and the children's life, and that mother often asked father and his wife to care for the children but would also withhold planned parenting time if she became angry with father and his wife. Further, the district court considered father's past alcohol abuse and did not focus on mother's mental health alone.

Mother also appears to argue that the district court could have independently "clarif[ied]" her misdiagnosis with a medical professional. However, district courts are prohibited from conducting independent investigations into matters before them. Minn. Code Jud. Conduct Rule 2.9(C) ("A judge shall not investigate facts in a matter independently . . ."). Mother had the responsibility to present any medical evidence that she wanted the district court to consider. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119-20 (Minn. App. 2001).

Lastly, mother appears to argue that the district court improperly gave her testimony less weight than other witnesses, which deprived her of a fair trial. However, district courts are empowered to make credibility determinations and we defer to those determinations.

Vangsness v. Vangsness, 607 N.W.2d 468, 472 (Minn. App. 2000). Although we recognize mother’s assertion that “the record [on appeal] does not show all that took place during the trial,” our review is nevertheless confined to the record. Minn. R. Civ. App. P. 110.01 (“The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.”). Mother’s arguments are unavailing.

B. The district court provided mother with a sufficient opportunity to be heard.

Mother argues that the district court interfered with her right to be heard because it intervened during her testimony, received only “one side of information,” and did not allow her to continue testifying.

“A judge shall accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law.” Minn. Code Jud. Conduct Rule 2.6(A). Minnesota General Rules of Practice, rule 2.02(d), provides that “[a] judge should generally refrain from intervening in the examination of witnesses or argument of counsel; however, the court shall intervene upon its own initiative to prevent a miscarriage of justice or obvious error of law.” The district court may question witnesses. Minn. R. Evid. 614(b).

Prior to mother’s direct testimony, the district court explained that it might interrupt intermittently to ask questions. Partway through mother’s testimony, the district court interrupted to ask questions relevant to its determination of the best interests of the children, then gave mother time to continue testifying. The district court received two of mother’s offered exhibits, allowed mother to present additional testimony and call witnesses, and

concluded by asking her again if she had more evidence to present. The district court also told mother that she could attach additional documentation already in the record to her closing brief for the district court's review. The district court's appropriate intervention did not result in it receiving only one side of information.

We also conclude that the district court did not violate the judicial code of conduct by preventing mother from being heard. At the evidentiary hearing, mother cross-examined all of father's witnesses, and the district court limited her questioning only after warning her and noting that she had repeatedly asked the same questions. The district court appropriately prevented mother from providing her own testimony during cross-examination. The district court sustained some of mother's objections during direct examination and concluded her cross-examination of father's wife only after mother had received an equal amount of time as father's counsel. Mother directly examined and redirected her witnesses without interruption, presented direct testimony, and submitted a written closing argument. The district court provided mother with a fair opportunity to be heard.

II. The district court did not abuse its discretion by failing to offer a longer continuance for mother to obtain new counsel.

Mother argues next that the district court did not grant her an adequate continuance to seek new counsel prior to the evidentiary hearing. We disagree.

Appellate courts will not reverse a district court's decision to grant or deny a continuance unless the district court clearly abused its discretion. *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). A district court abuses its discretion when its denial of a

continuance “prejudices the outcome of the trial.” *Weise v. Comm’r of Pub. Safety*, 370 N.W.2d 676, 678 (Minn. App. 1985). Although “[a district] court has a duty to ensure fairness to a [self-represented] litigant by allowing reasonable accommodation so long as there is no prejudice to the adverse party,” *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987), a “[w]ithdrawal of counsel does not create any right to continuance of any scheduled trial or hearing.” Minn. R. Gen. Prac. 105.

Here, the district court granted mother a 17-day continuance for her to seek new counsel. Mother has not demonstrated how the length of the district court’s continuance prejudiced her case, as she has not shown that she was prevented from offering evidence that would have materially affected the district court’s custody and parenting-time determination. *See In re Welfare of Child. of G.A.H.*, 998 N.W.2d 222, 239 (Minn. 2023) (determining whether mother in termination-of-parental-rights proceeding had shown prejudice by considering district court’s bases for its decision). We discern no abuse of discretion by the district court in granting mother a 17-day continuance.

III. The district court did not violate mother’s right to procedural due process.

Lastly, mother appears to allege that the district court violated her procedural due-process rights under the Fourteenth Amendment by limiting her testimony before issuing its order. Mother did not raise her due-process challenge before the district court, and it is therefore forfeited. *Annis v. Annis*, 84 N.W.2d 256, 263 (Minn. 1957) (“[L]itigants are bound [on appeal] by the . . . theories . . . upon which the action was actually tried below.”); *see In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (declining to address constitutional issue raised for first time on appeal in termination-of-parental-rights

matter); *Butler v. Jakes*, 977 N.W.2d 867, 873 (Minn. App. 2022) (applying *C.L.L.* in an order-for-protection appeal). Nevertheless, even if it were properly before us, mother’s argument fails on the merits.

Appellate courts review questions regarding “whether procedural due process has been violated de novo.” *Olson v. One 1999 Lexus*, 924 N.W.2d 594, 601 (Minn. 2019). Appellate courts apply a two-step analysis, first identifying “whether the government has deprived the individual of a protected life, liberty, or property interest,” and, if so, then determining “whether the procedures followed by the government were constitutionally sufficient.” *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (quotation omitted). Procedural due process requires that a person have notice and “an opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* (Quotation omitted.)

Here, the district court’s order deprived mother of physical custody of the children, a fundamental right. *See In re Welfare of Child of F.F.N.M.*, 999 N.W.2d 525, 542 (Minn. App. 2023) (noting that “a parent’s right to make decisions concerning the care, custody, and control of [their] children is a protected fundamental right” (quotation omitted)), *rev. denied* (Minn. Jan. 5, 2024). However, mother had notice of the evidentiary hearing for months before it was held, and the district court gave her an opportunity to be heard in both a meaningful time and manner, consistent with procedural due process. *Sawh*, 823 N.W.2d at 632. We conclude that the district court did not deprive mother of a meaningful opportunity to be heard, used an appropriate procedure, and did not risk an erroneous deprivation of mother’s physical-custody rights.

Affirmed.