This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).

STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0105, A08-0140

In the Matter of the Welfare of the Children of:
M. L. A. and J. J. K., Parents.

Filed September 23, 2008
Affirmed
Hudson, Judge

Beltrami County District Court
File No. 04-J5-06-050164

Bill L. Thompson, Falsani, Balmer, Peterson, Quinn & Beyer, 1200 Alworth Building, 306 West Superior Street, Duluth, Minnesota 55802 (for appellant father J.J.K.)

Donald G. Kirchner, Kirchner Law Firm, PLLC, 205 Seventh Street Northwest, Suite 4, Bemidji, Minnesota 56601 (for appellant mother M.L.A.)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101; and

Timothy R. Faver, Beltrami County Attorney, Annie P. Claesson-Huseby, Assistant County Attorney, 600 Minnesota Avenue Northwest, Suite 400, Bemidji, Minnesota 56601 (for respondent Beltrami County)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Muehlberg, Judge.[*]

---

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

U N P U B L I S H E D   O P I N I O N

HUDSON, Judge

These are consolidated appeals after a remand in a termination-of-parental-rights matter. Appellant-parents argue that the record does not support the termination of their parental rights. We affirm.

FACTS

The children at issue in this case are currently three years old and almost five years old. Their parents have never been married. Previously, this court reversed the district court's refusal to set aside a purportedly stipulated July 2006 judgment involuntarily terminating mother's parental rights, and remanded for the district court to determine whether mother's agreement was coerced. *In re Welfare of Children of M.L.A.*, 730 N.W.2d 54 (Minn. App. 2007). On remand, the parents, the county, and the district court agreed to try the termination of the parental rights of mother and of father. After trial, the district court terminated both parents' parental rights to both their older child and their younger, special-needs child, ruling that the younger child suffered egregious harm while in mother's care, and that both parents failed to satisfy the duties of the parent-child relationship, were palpably unfit parents, and failed to correct the conditions requiring the children's out-of-home placement. This court consolidated the parents' separate appeals.

D E C I S I O N

On appeal from a district court's termination of parental rights, appellate courts

> determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous. We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.

In re Welfare of Children of S.E.P., 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted). If a single statutory basis for terminating parental rights is affirmed, an appellate court need not address other statutory bases that the district court may have found to exist. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005).

I

The district court terminated mother's parental rights because the younger child suffered egregious harm while in mother's care. Under Minn. Stat. § 260C.301, subd. 1(b)(6) (2006), a district court may terminate parental rights if

> 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[.]

"Egregious harm" includes "'substantial bodily harm' to a child as defined in section 609.02, subdivision 7a." Minn. Stat. § 260C.007, subd. 14(2) (2006). "Substantial

bodily harm" under Minn. Stat. § 609.02, subd. 7a (2006) includes "a fracture of any bodily member." Here, the younger child suffered the fractures of nine bones in serial incidents over an extended period of time while in mother's care. Therefore, the younger child suffered egregious harm. The district court, however, did not identify who harmed the child.

In an opinion issued after trial in this case, the supreme court held that if a child suffers egregious harm while in a parent's care and if the parent caring for the child did not inflict that harm, a termination of that parent's parental rights requires the district court to find by clear and convincing evidence that "the parent either knew or should have known" that the child suffered the egregious harm. *In re Welfare of Child of T.P.*, 747 N.W.2d 356, 362 (Minn. 2008) (footnote omitted). Because the district court in *T.P.* did not address the knew-or-should-have-known question, the case was remanded. *T.P.*, 747 N.W.2d at 362–63. Because *T.P.* was issued during the briefing of this appeal, the district court here could not apply it. For the reasons stated below, however, we decline to remand this case for a second time.

Mother argues that because "no evidence" shows that she caused the younger child's injuries, *T.P.* requires findings that she knew or should have known about the harm. Because "[t]here is nothing in the record to show that [she] knew or should have known that [the younger child] had experienced egregious harm," mother contends that her parental rights cannot be terminated for egregious harm. Before addressing this argument, we note three things. First, if mother was the one who harmed the younger child, *T.P.*'s knew-or-should-have-known test, which applies to parents who do not harm

a child, does not apply. Second, a termination of parental rights for egregious harm does not require that the harm be intentional. *See* Minn. Stat. § 260C.301, subd. 1(b)(6) (requiring only that the child experience "egregious[]" harm).[1] Third, while *T.P.* does not conclusively address what constitutes being in a parent's care for egregious-harm purposes, *T.P.*, 747 N.W.2d at 361, here, the child-protection investigator testified that mother admitted that she "may" have done "something" to the younger child, and that while mother gave no clear explanation of the child's injuries, "[e]very time" mother proposed an explanation, the explanation was an event or events occurring "[i]n [mother's] home in her care." Thus, whatever constitutes being in a parent's care for egregious-harm purposes, whoever harmed the younger child did so while that child was in mother's care.

Assuming that the knew-or-should-have-known requirement applies here, we conclude that, on this record, mother knew or should have known of the harm. Even if mother did not harm the younger child, the record shows that she knew the child had suffered harm because she took the child to the hospital where examination revealed that the child had nine fractured bones. Because those fractured bones were in various stages of healing, the fractures had to have occurred over an extended period of time. On this record, we have no trouble holding that a child suffering nine fractured bones over an extended period of time supports a finding that the harm was known to mother and is "of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being,

[1] Here, an emergency room doctor, a pediatrician, and the child-protection investigator each indicated that they believed that the younger child had been physically abused.

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" under Minn. Stat. § 260C.301, subd. 1(b)(6) (2006). Even if mother did not personally harm the child, the record establishes that she lacks the ability or inclination to protect the child from harm by others. And egregious harm to one child in a parent's care can support termination of the parent's parental rights to another child. *See In re Welfare of A.L.F.*, 579 N.W.2d 152, 155–56 (Minn. App. 1998) (affirming a termination of parental rights where the parent harmed someone else's child); *In re Child of A.S.*, 698 N.W.2d 190, 197–98 (Minn. App. 2005) (affirming a termination of parental rights because of an egregious-harm finding based on the parent's sexual abuse of a nonrelative child), *review denied* (Minn. Sept. 20, 2005); *cf.* Minn. Stat. § 260C.301, subd. 3(a) (2006) (requiring a county attorney to petition to terminate parental rights when a child's sibling has been subjected to egregious harm). Therefore, we affirm the ruling that the egregious-harm basis for the termination of mother's parental rights exists in this case.

Because the district court did not terminate father's parental rights for egregious harm, we need not address this basis for termination regarding father.

II

A district court may terminate parental rights if it determines that a parent

> is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable

> future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2006). The district court terminated both parents' parental rights under this provision.

A. Mother

Because we are affirming the existence of the egregious-harm basis for terminating mother's parental rights, we need not address other bases for terminating her parental rights. *T.A.A.*, 702 N.W.2d at 708 n.3. We note, however, that this record supports the district court's palpable unfitness determination regarding mother.

The parties' younger child has significant special needs, nutritional, medical, and otherwise. Of the younger child's four hospitalizations, mother's nutritional and medical decisions contributed to two of them being for dehydration and failure to maintain weight. When hospitalized or otherwise not in mother's care, however, the younger child gained weight. Further, mother, who has significant intellectual and emotional limitations, failed or refused to take advantage of county services designed to assist her in parenting. Mother was often hostile to county assistance, and she admitted to the county child-protection investigator that she was angry, frustrated, and overwhelmed by parenting, and that she "may" have done "something" to the younger child. Although mother's palpable unfitness has not yet harmed the older child, who has not required special medical attention, mother's inability to follow medical instructions and care for the younger child indicates that the older child is also at risk for medical and nutritional neglect. A failure to provide adequate nutrition, a correction of a child's problems upon

removal from a parent's care, a refusal to acknowledge a problem or to take advantage of county assistance, and unpredictability and violence can support affirming a termination of parental rights for palpable unfitness. *See In re Welfare of C.D.*, 393 N.W.2d 697, 699–701 (Minn. App. 1986) (nutrition), *review denied* (Minn. Nov. 26, 1986); *In re Welfare of W.R.*, 379 N.W.2d 544, 548 (Minn. App. 1985) (correction of problems), *review denied* (Minn. Feb. 19, 1986); *In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. App. 1985) (county assistance), *review denied* (Minn. Nov. 25, 1985); *cf. In re Welfare of L.M.M.*, 372 N.W.2d 431, 433–34 (Minn. App. 1985) (referring to a parent's violent and unpredictable behavior toward the children and a history of uncooperative and violent behavior toward county personnel), *review denied* (Minn. Oct. 18, 1985).

Mother argues that she has taken advantage of county services since the remand, that the documented improvement in the younger child's condition will make it less stressful for her to care for him, and that she will be able to care for the children in the foreseeable future. But the health and behavior of both children has improved remarkably after they were removed from mother's care. Also, mother admits that, two and a half years after the filing of the petition to terminate her parental rights, and now more than two years after the initial termination, she cannot currently care for her children, one of whom has significant special needs and both of whom the district court found to need stability. Further, no expert indicated that mother is expected to be able to care for her children in the reasonably foreseeable future. On this record, the district court did not abuse its discretion by implicitly concluding that any progress mother made in being able to care for her children since the remand is insufficient to require a reversal

of the district court's determination of mother's palpable unfitness. *See* Minn. Stat. § 260C.201, subd. 11a (2006) (stating that when a child under eight years is placed outside the home, a permanency hearing shall be held within six months); *In re Welfare of B.M.*, 383 N.W.2d 704, 708 (Minn. App. 1986) (holding that limited progress by a parent toward adequate parenting was insufficient to avoid termination), *review denied* (Minn. May 22, 1986).

B. Father

Father argues that the determination that he is a palpably unfit parent must be rejected because he had no rights regarding the children and therefore could not be proactive regarding their care. He argues that had he tried to establish paternity and custodial rights, he would have upset his relationship with mother, which would have limited his input regarding the children. *See* Minn. Stat. § 257.541, subd. 1 (2006) (stating that absent a paternity adjudication or a recognition of parentage, a mother has sole custody of children born out of wedlock). But if father had established his paternity, he could have sought custody or parenting time, rights which would have assured his position in the children's lives. Minn. Stat. § 257.57, subds. 2(1), 3 (2006). Moreover, an adjudication of paternity or a recognition of parentage would have allowed father to seek custody under Minn. Stat. § 518.156 (2006). Minn. Stat. § 257.541, subds. 2(b), 3; .66, subd. 3 (2006). We also note that custody awards under chapter 518 require a determination of legal custody. Minn. Stat. § 518.17, subd. 3(a)(1) (2006). Legal custody includes the right to make or to participate in health-care decisions. Minn. Stat. § 518.003, subd. 3(a) (2006). Thus, we reject father's argument that he could not have

input in the medical or other decisions regarding the children. Likewise, father's argument that establishing his legal rights regarding his children would have upset his relationship with mother is unpersuasive. Rather, it simply suggests that he valued his relationship with mother more than his relationship with the children. *Cf.* Minn. Stat. § 260C.301, subd. 7 (2006) (stating that "[w]here the interest of parent and child conflict, the interests of the child are paramount").

Father also argues that there is no evidence of a "consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship" that renders him unable, for the foreseeable future, to care for the children. Minn. Stat. § 260C.301, subd. 1(b)(4). But father showed a marked indifference toward the children as evidenced by his minimal efforts to establish and maintain a relationship with them. The district court's findings in this regard are well supported by the record. Father's indifference was such that he did not appeal the prior termination of his parental rights. On remand, he admitted that he still would not be able to parent the children for at least a year. Further, his on-again-off-again relationship with mother resulted in an intermittent relationship with his children, despite his knowledge of mother's parental deficiencies and the children's needs. At trial, father admitted that, when he and mother were together, they argued about the feeding of the malnourished younger child, but eventually, father "threw up his hands and said 'whatever.'" In addition, he did not familiarize himself with the younger child's apnea monitor and did not appear in the earlier proceeding in which the children were adjudicated to need protection or services. And when he occasionally attended the older child's occupational therapy sessions, he

did not participate in those sessions or ask questions. Similarly, father did not participate in the older child's physical therapy. Parental indifference can support affirming a termination of parental rights. *See In re Welfare of L.M.M.*, 372 N.W.2d 431, 432–33 (Minn. App. 1985) (affirming termination of parental rights for palpable unfitness where the parent lacked an ability to manage financial affairs, physically and sexually abused the child, and showed indifference toward the child's needs), *review denied* (Minn. Oct. 18, 1985); *In re Welfare of Udstuen*, 349 N.W.2d 300, 304 (Minn. App. 1984) (considering, in the context of an incarcerated parent, the child's special needs, and the father's indifference, among other things).

Furthermore, it is undisputed that the children need stability. But multiple witnesses testified to the lack of stability in father's life; he is living with his current girlfriend but is not on her lease, and there are concerns about his chemical dependency, the steadiness of his employment, and his explosive temper. On this record, we reject father's argument that there is no evidence of a "consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship" rendering him unable, for the foreseeable future, to care for the children under Minn. Stat. § 260C.301, subd. 1(b)(4) (2006).

The district court also terminated both parents' parental rights for their failure to satisfy their parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2) (2006), and because reasonable efforts had failed to correct the conditions prompting the placement. Minn. Stat. § 260C.301, subd. 1(b)(5) (2006). Because we have affirmed the district

court's other statutory bases for terminating parental rights, we decline to address those additional bases for termination. *T.A.A.*, 702 N.W.2d at 708 n.3.

III

The district court found that it was in the children's best interests for both parents' parental rights to be terminated. A child's best interests are the "paramount" concern when addressing whether to terminate parental rights. Minn. Stat. § 260C.301, subd. 7 (2006). A child's best interests also outweigh conflicting interests of a parent and may preclude termination of parental rights when a statutory basis for termination is otherwise proven. *Id.* *See also In re Tanghe*, 672 N.W.2d 623, 625–26 (Minn. App. 2003). When addressing a child's best interests, the district court is to balance the child's interest and the parent's interest in preserving the parent-child relationship, as well as competing interests of the child, including the child's interest in "a stable environment, health considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

Father, but not mother, challenges the finding that termination is in the children's best interests. Citing *In re Welfare of M.J.L.*, 582 N.W.2d 585, 588 n.3 (Minn. App. 1998), father argues that because the district court adopted the guardian ad litem's opinion that termination was in the children's best interests but did not make findings on the balancing test, this court cannot review the best-interests finding. But the portion of *M.J.L.* cited by father addresses this court's duty when it reviews a district court's verbatim adoption of a party's proposed order, something that did not happen here.

Also, because any district court error in not making findings on the balancing test is harmless, reversal is not required. *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (refusing to reverse a termination of parental rights for a harmless error). Father's demonstrated indifference to his children shows that his interest in retaining a parent-child relationship is limited. Further, father does not identify a competing interest of the children that favors retaining the parent-child relationship. Finally, we note that this record supports the district court's determination that terminating mother's parental rights is in the children's best interests.

Affirmed.