

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1242**

In re the Matter of the Welfare of the Child of:
K. A. S. and P. J. R., Parents.

**Filed February 3, 2020
Affirmed
Segal, Judge**

Olmsted County District Court
File No. 55-JV-19-2817

Michael D. Schatz, Schatz Law Firm, Rochester, Minnesota (for appellant P.J.R.)

Steven Murakami, Murakami Law Firm, LLC, Rochester, Minnesota (for respondent K.A.S.)

Mark A. Ostrem, Olmsted County Attorney, Debra A. Groehler, Senior Assistant County Attorney, Rochester, Minnesota (for respondent county)

Abbey Riedel, Wabasha, Minnesota (guardian ad litem)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Segal,
Judge.

UNPUBLISHED OPINION

SEGAL, Judge

On appeal from the district court's termination of his parental rights, appellant-father P.J.R. argues that the district court (1) abused its discretion by denying father's motion for a continuance; and (2) erred in granting the county's petition to terminate

father's parental rights because the county failed to prove that the child experienced egregious harm in his care.¹ We affirm.

FACTS

On June 6, 2018, respondent Olmsted County Health, Housing, and Human Services (the county) filed a petition for a child in need of protection or services (CHIPS) on behalf of K.A.S. On June 26, 2018, the child was adjudicated in need of protection or services.

On January 24, 2019, mother voluntarily signed over custody of the child to father who was residing in Oregon. The court determined that it was in the child's best interests to live with her father, and transferred legal and physical custody of the child to father on February 5, 2019.

On April 5, the child's foster parent, who is also the child's grandmother, traveled to Oregon for a visit with the child. Father told foster parent that she could take the child for the weekend. While driving to the hotel in Oregon, the child told her foster parent, "daddy and I have a secret." The child then said that she could not tell anyone what that secret was because, if she did, she "wouldn't be able to live with [father] and [she] would have to go to outer space to live." Foster parent asked the child to tell her what the secret was and let the child know that she would not have to live in outer space. The child then disclosed to her foster parent that "daddy touches my privates with his privates." Her foster parent asked, "just the outside or inside too?" and the child said, "inside too." When they got to the hotel, foster parent called the county social worker in Olmsted County and

¹ Mother did not appeal the termination of her parental rights. The only appeal before this court is by father.

disclosed what the child told her. The social worker got in touch with the authorities in Oregon.

The police met foster parent and the child at their hotel. One of the officers interviewed the child and asked her a series of yes or no questions. When the officer asked the child, “if I said that daddy touched your privates with his privates, would that be a yes or a no,” the child said, “yes.”

The next morning, on April 6, a nurse practitioner at Mount Emily Safe Center in La Grande, Oregon, conducted a physical examination of the child. During this exam, the nurse practitioner noticed abnormalities in the child’s genital area. Part of her hymen was missing and there was well-healed scarring on tissue from her vagina that extended into her anus. The nurse practitioner testified at trial that these injuries indicated that the child had “penetrating trauma to the area.”

After the physical exam, a child forensic interviewer at Mount Emily Safe Center conducted a forensic interview with the child. During this interview, the child said that she was worried she would be in trouble if she told the forensic interviewer what happened to her. She then disclosed that her father put his private in her private. She indicated this was “the part where the pee comes out and the part where the poop comes out.” The child said this occurred when she was living with father and that it happened at nighttime on father’s bed.

Father was arrested in Grant County, Oregon, on charges of first-degree rape, incest, and first-degree sexual abuse. He signed a voluntary change of custody back to the county, and the child returned to Minnesota with her foster parent. The county petitioned for

termination of parental rights (TPR) on behalf of the child, involving both mother and father, on April 24, 2019. The county filed the TPR against father pursuant to Minn. Stat. § 260C.301, subd. 1(b)(6) (2018), alleging that the child experienced egregious harm in his care.

The attorney for father was assigned on April 25 to represent father in the TPR proceeding; it was the same attorney that had previously represented father during the CHIPS and transfer-of-custody proceedings with respect to the child. On May 14, the court held an admit/deny hearing in regard to the TPR against mother. Mother entered a denial at that time. Father's attorney was not present at this hearing. On May 28, father's attorney agreed to the trial date of July 9. Father's attorney did not notify the court at the May 28 hearing that his client had not yet been served. When the court was notified on June 12 that father had not been served, service was made that afternoon on father in the Grant County, Oregon jail.² A second admit/deny hearing was held on June 28. At this time, father entered a denial. The court also held a pretrial conference at the June 28 hearing after the denial was entered. Matters discussed at the hearing included logistics of the trial, whether father would be able to be present, what witnesses would be called and additional discovery matters. Father's attorney raised no claim of delay in receiving discovery. On July 3, the county received the video and documents from Oregon and immediately made them available to mother and father.

² Service on father had originally been attempted at his residence in John Day, Oregon, in April 2019. However, father was in jail at the time. It is unclear from the record why service did not occur until June 12, 2019.

At the TPR trial, father's attorney moved for a continuance. His reasons for a continuance were (1) that the court did not hold a pretrial conference as required under Minn. R. Juv. Prot. P. 4.03, subd. 3(b)³ and (2) that he did not receive all of the discovery until Friday, July 5, when the first day of the trial was Tuesday, July 9.⁴ The county, mother, and guardian ad litem all opposed continuing the TPR trial. After a lengthy discussion on the record regarding a continuance, the district court denied the continuance due to the statutory timelines and the need for permanency for the child.

The TPR trial occurred over two days and, as it pertained to father, consisted of testimony from the foster parent, the forensic investigator, the nurse practitioner who conducted the physical exam, and the video of the forensic interview.

At the end of the trial, the district court found there was sufficient basis to terminate both father's and mother's parental rights and that termination was in the child's best interests. Father appeals from this decision.

³ Father's TPR trial took place in July 2019 under the previous rules of Minnesota Rules of Juvenile Protection Procedure and, therefore, he moved under the rules in effect at that time. The current rule, that went into effect on September 1, 2019, regarding the timeline requirement for a pretrial hearing prior to a TPR trial has been recodified as Minn. R. Juv. Prot. P. 52.02, subd. 3, and is substantively the same as the previous rule with regard to the pretrial hearing timeline.

⁴ Father's attorney also stated that he believed father should be physically present in the courtroom for the TPR trial. At the time of the hearing, father was in jail in Oregon pending criminal charges relating to the basis of the TPR. Father was able to appear at the hearing via phone and, on appeal, does not challenge his lack of physical presence in the courtroom at the trial.

DECISION

I. The district court did not abuse its discretion in denying father’s motion for a continuance of his TPR trial.

Father argues that the district court abused its discretion when it did not grant him a continuance of his TPR trial because he was allegedly denied a pretrial hearing and because he received some of the discovery documents only four days prior to the trial date. A district court may continue a TPR trial upon findings made on the record that “a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed.” Minn. R. Juv. Prot. P. 58.01, subd. 2.⁵ It is within the district court’s discretion whether to grant a continuance, and absent a showing of a clear abuse of discretion, this court will not reverse it. *In re Welfare of J.A.S.*, 488 N.W.2d 332, 335 (Minn. App. 1992), *review denied* (Minn. Oct. 20, 1992). A continuance should not be granted if it will cause delays of the permanency timelines. *See* Minn. R. Juv. Prot. P. 5.01, subd. 1.

Alleged Failure to Conduct a Pretrial Hearing

Under the Minnesota Rules of Juvenile Protection Procedure, “the court shall convene a pretrial hearing at least 10 days prior to trial.” Minn. R. Juv. Prot. P. 52.02, subd. 3. Even though father had not entered an admission or denial yet on the petition, due

⁵ New Minnesota Rules of Juvenile Protection Procedure went into effect on September 1, 2019. All Minnesota Rules of Juvenile Protection Procedure cited in this opinion are substantively similar or identical to the previous rules that were in effect during the TPR trial. Therefore, the current rule numbers are used throughout.

to delayed service, the court held a pretrial hearing for both parties on June 12, 2019. Attorney for father, the same attorney who had represented father during the CHIPS and transfer-of-custody proceedings, was present at this hearing. On June 28, the district court held a separate, combined admit/deny hearing and pretrial conference for father. Father entered a denial. Afterward, the parties discussed logistics for father appearing either by phone or ITV from the prison in Oregon, logistics of taking testimony via phone from the witnesses in Oregon and obtaining a video of the forensic interview. This part of the hearing was a “pretrial conference.”

Even if the June 28 hearing was not considered to have been a pretrial conference, the court rule setting out the grounds for a continuance expressly states that “[f]ailure to conduct a pretrial hearing shall not constitute good cause” to support a motion for a continuance. Minn. R. Juv. Prot. P. 58.01, subd. 2. Therefore, the district court did not abuse its discretion when it denied father a continuance due to the alleged failure to hold a pretrial conference.

Continuance Due to Alleged Discovery Delay

Father also argues that the district court abused its discretion by denying his request for a continuance when he received discovery on the Friday of a holiday weekend and the trial commenced on the following Tuesday. On appeal, father states he received the discovery late on Friday, July 5, a “day after the Fourth of July, a day in which many attorneys have taken off due to its situation between two other non-work days.”

Beyond the fact that the attorney said he received discovery only four days before the start of trial, father put forward no evidence of having suffered prejudice as a result.

Father's attorney was assigned on April 25, 2019, at the commencement of the TPR case against father, and he acknowledged that he represented father during the CHIPS trial and transfer-of-custody proceedings. Much of the discovery had already been disclosed during the CHIPS trial as it applied to mother's case. With regard to the evidence from Oregon, the county received a copy of the forensic interview on July 3, and notified the parents' attorneys the same day. At trial, father's attorney conducted cross-examinations of all of the county's witnesses against his client.

Father claims that if a pretrial hearing had occurred "these discovery issues could have been handled differently." However, as stated above, he had the opportunity to raise discovery issues at the June 28 hearing, which was a combined admit/deny and pretrial hearing. And, regardless, failure to hold a pretrial conference is not grounds to continue a TPR trial.

Additionally, the court must still abide by the timelines set forth in the Minnesota Rules of Juvenile Protection Procedure for permanency. After a denial is entered at the admit/deny hearing, "a trial regarding a permanency or termination of parental rights matter shall commence within 60 days of the first admit/deny hearing." Minn. R. Juv. Prot. P. 52.02, subd. 4. The district court cited the need to abide by the permanency timelines as a reason for denying the continuance. The 60-day permanency clock began to run from mother's admit/deny hearing on May 14. The trial occurred on July 9-10, just within the 60-day timeline.

Therefore, because the choice to grant a continuance sits within the discretion of the district court, and father cannot show that the district court abused its discretion when denying the continuance, the district court did not err.

II. The county presented clear and convincing evidence that the child experienced egregious harm in father's care.

Father also argues that the county did not prove a statutory basis for terminating his parental rights because it did not satisfy its burden of proof that the child experienced egregious harm in his care. A district court may terminate parental rights only if it concludes one or more statutory bases exist and termination is in the child's best interests. *See* Minn. Stat. § 260C.301, subd. 1(b)(6). This court reviews the determination of whether or not a statutory basis for termination of parental rights exists for an abuse of discretion. *In re Welfare of K.L.W.*, 924 N.W.2d 649, 653 (Minn. App. 2019), *review denied* (Minn. Mar. 8, 2019). Additionally, this court reviews a district court's factual findings for clear error, considering whether they are supported by substantial evidence and address the appropriate statutory criteria. *In re Welfare of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018). "A finding is clearly erroneous if it is either 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).

The county filed a petition to terminate the parental rights of father alleging that the child "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 . . . to be in the parent's

care.” Minn. Stat. § 260C.301, subd. 1(b)(6). Egregious harm includes conduct towards a child that constitutes criminal sexual conduct under Minn. Stat. §§ 609.342-.345 (2018). Minn. Stat. § 260C.007, subd. 14(10) (2018).

For a termination of parental rights to occur, the county must present clear and convincing evidence that (1) termination is in the child’s best interests, (2) the petitioner made reasonable efforts to rehabilitate the parent and reunite the parent and child, and (3) at least one statutory ground for termination exists. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). When a termination is based on accusations of sexual abuse, however, rehabilitation and reunification efforts by the county are not required. Minn. Stat. § 260.012(a)(5) (2018).

The county presented the following evidence at the TPR trial that demonstrated the child experienced egregious harm when in the care of father. The child’s former foster parent testified at trial about the initial disclosure of sexual abuse. The forensic interviewer testified to the child’s disclosure of abuse that father “put his privates in [her] privates.” The child also disclosed to the forensic interviewer that this occurred when she was living with father, and that it happened on his bed at night time. The entire 45-minute forensic interview that contained the child disclosing what happened was viewed at trial and entered into evidence. And notably, the child’s disclosures were consistent throughout.

Additionally, the nurse practitioner testified to the physical trauma that the child experienced to her hymen, genital area and anus. She also testified that, while it is common not to see any signs of trauma after sexual abuse occurs, the trauma she observed on the child was consistent with penetrating sexual trauma in her genital area and was also

consistent with the sexual abuse that the child disclosed. The nurse practitioner testified that she observed scarring, indicating that there must have been “significant trauma to destroy the tissue to cause lasting scarring.” Additionally, she testified that she believed there is likely evidence of multiple injuries at different times, with the most recent perhaps only a month before the exam. This time frame overlaps with the dates that the child was living with father and under his care. Therefore, the county presented clear and convincing evidence that the child experienced egregious harm while in father’s care.

When the district court analyzed the best-interests factors pertaining to father, it found that the child was abused while in father’s care, that she was afraid of him, that he is facing criminal charges over these accusations and that it is in the child’s best interests to terminate the parental rights of father.

Because there is clear and convincing evidence that a statutory ground for termination of parental rights exists, and termination is in the child’s best interests, the district court did not abuse its discretion in terminating father’s parental rights to the child.

Affirmed.