STATE OF MINNESOTA

IN SUPREME COURT

A20-1349
A20-1351

Court of Appeals — Gildea, C.J.

In the Matter of the Welfare of the Child of:
K.K. and K.M.R., Parents.

Filed: September 29, 2021
Office of Appellate Courts

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S Y L L A B U S

1. When taking the testimony of a child informally at a hearing under Minn. Stat. § 260C.163, subd. 6 (2020), the district court cannot exclude a parent's attorney from that testimony when excusing the presence of the parent under Minn. Stat. § 260C.163, subd. 7 (2020).

2. Although the right to cross-examine witnesses provided in Minn. Stat. § 260C.163, subd. 8 (2020), is unqualified, the procedure the district court establishes to take a child's testimony informally must be guided by the child's best interests.

3. Any procedural error in taking the child's testimony in this case does not require a new trial in light of the clear and convincing evidence supporting the district court's decision to terminate parental rights.

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

In this appeal, we consider the procedures for taking the testimony of a child in proceedings to terminate parental rights under Minn. Stat. ch. 260C (2020). In the trial held in this case on Winona County's petition to terminate parental rights, the district court took the child's testimony informally, excusing the parents and attorneys while the judge questioned the child with the child's guardian ad litem present. The district court granted the County's petition. On appeal, the parents each asserted that the district court erred by taking the child's testimony outside of their presence or that of their attorneys, thereby effectively preventing them from exercising their right of cross-examination. The court of appeals affirmed, concluding that the district court did not err in excluding the parents or the attorneys while the child testified, but if there was an error, it did not require a new trial in light of the overwhelming evidence supporting the County's petition. *In re Welfare of Child of K.K. & K.M.R.*, Nos. A20-1349, A20-1351, 2021 WL 1343348, at *10–11 (Minn.

App. Apr. 12, 2021). We granted review to address the procedures to be used when taking a child's testimony informally under Minn. Stat. § 260C.163.[1]

We held oral argument on August 10, 2021, and that day, issued an order that affirmed the decision of the court of appeals. This opinion explains the reasons for our decision. Although we conclude that the district court's procedures did not fully vindicate the parents' right to cross-examine the child, *see* Minn. Stat. § 260C.163, subd. 8, we agree with the court of appeals that any error in the procedures used to take the child's testimony does not require a new trial. We therefore affirm.

FACTS

Winona County Health & Human Services (the County) filed a petition in June 2020 to terminate the parents' rights to their child.[2] As the trial date approached, the County asked the district court to take the child's testimony informally, specifically proposing that the child be questioned only in the presence of the judge and the child's guardian ad litem. Father, who was self-represented during the proceedings in the district court, objected,

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[1] This statute was amended during the 2021 special session, *see* Act of June 29, 2021, ch. 7, art. 9, § 5 (amending Minn. Stat. § 260C.163, subd. 3), but these amendments are not relevant to the issues presented by this case. Thus, we cite to the 2020 version of the statute in this opinion, which governed the trial in this case.

[2] The parents are generally identified in the record and on appeal by their initials, K.K. and K.M.R. For convenience, we will refer to them as either "mother," "father," or "the parents," depending on the context.

The primary issue in this appeal is whether a new trial is required because the district court erred in using procedures to take the child's testimony informally that interfered with the parents' statutory right to be present at the trial and cross-examine witnesses. Because the statutory basis asserted in the County's petition to terminate is not at issue, we focus on the facts regarding the child's trial testimony.

noting that the technology by which the child would appear allowed the court "to toggle mute and video settings" so there was no need to exclude the parents and mother's attorney from listening to the child's testimony.[3] At that point, it was uncertain whether the child would testify, but if he did, the district court concluded that the child's best interests would be served by allowing him to testify remotely, in the presence of the child's guardian ad litem, who could then be cross-examined by the parties on the child's testimony. In other words, only the judge, the guardian ad litem, and the court reporter would be present; no attorneys—for the County, for mother, or for the child—would be present or listening if the child testified.

At trial, evidence was offered to show the child's preferences regarding a return to his parents. One of the child's foster parents and several professionals who worked with the child testified that the child did not want to return to his parents and had repeatedly said so. The child had also written a letter, which was admitted into evidence, stating that he did not want to return to his parents.

During the second trial day, the parties sought clarification on the procedures for taking the child's testimony. The attorney for the County, which had asked the district court to take the child's testimony informally, confirmed that the procedures that had been proposed would allow only the judge and the guardian ad litem to listen or be present when the child testified. Mother's attorney objected to that procedure, stating that the

[3] The trial began on August 31, 2020, during a phase of the COVID-19 pandemic in which very limited in-person proceedings were held in Minnesota's district courts. Accordingly, some witnesses appeared at this trial and testified virtually, via Zoom.

opportunity to hear testimony is fundamental to the ability to cross-examine and confront a witness. The attorney asked, at a minimum, to be allowed to listen to the child testify. Father did not state an objection to the procedure at this point. When the child confirmed that he would testify, the district court stated that the testimony would be taken as an informal conversation, held over Zoom, with only the judge, the guardian ad litem, and the court reporter listening.

The district court questioned the child about school, likes and dislikes, and current living arrangements. The child voluntarily stated that he did not want to return to living with his parents. When the testimony ended and the child was off the Zoom call, the district court thoroughly summarized the child's testimony for the parents and the attorneys. Neither parent asked the district court to present follow-up questions to the child, either in writing or by calling the child to testify again. Neither parent requested a transcript of the child's testimony, nor questioned the child's guardian ad litem about the child's testimony. After the trial, the district court granted the County's petition to terminate the parental relationship.

The parents each appealed, asserting among other issues that the district court erred in taking the child's testimony outside their presence.[4] Father asserted that the district court erred in excluding the attorneys from being present during the child's testimony and asking questions regarding the child's preferences. This error required a reversal and new trial, father argued, because the child's testimony "significantly influenced and impacted" the

[4] Father, who was self-represented at the trial, has been represented on appeal.

district court's decision on the child's best interests. Mother argued that the child should have testified "openly" at trial, noting that no findings were made on the need for the procedure used in light of the child's best interests. Neither parent asserted that the district court's procedure for taking the child's testimony violated a specific constitutional right.

The court of appeals affirmed, concluding that "the plain language of subdivisions 6 and 7" of section 260C.163 allows the district court "to take the testimony of a child witness privately and informally when it is in the child's best interests" to do so by excluding "the parties and their attorneys" from being present during that testimony. *In re Welfare of Child of K.K. & K.M.R.*, 2021 WL 1343348, at *10. The court of appeals also concluded that any error in the procedure used to take the child's testimony did not require a new trial because the evidence, which the court of appeals described as "overwhelming," independently supported the district court's decision. *Id.* at *11.

We granted the parents' petitions for review to address the procedures for taking a child's testimony informally under Minn. Stat. § 260C.163.

ANALYSIS

Minnesota Statutes § 260C.163 states that a child and the child's parent, guardian, or custodian are entitled to "participate" in the proceedings on a petition to terminate parental rights, and "are entitled to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing." *Id.*, subds. 2, 8. If a child testifies, the district court can take that testimony "informally when it is in the child's best interests to do so." *Id.*, subd. 6. Among other procedures that can be used to take testimony informally, the court may "excuse the presence of the child's parent, guardian, or custodian

from the room where the child is questioned." *Id.* When a parent is excused, the "attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian." *Id.*, subd. 7.

The parties agree that section 260C.163 allows the district court to take the testimony of a child witness informally. The questions presented here concern how to do so while balancing the child's best interests, which is the "paramount consideration," Minn. Stat. § 260C.001, subd. 3, with the parents' right under section 260C.163 to participate and to cross-examine witnesses. These issues require us to interpret the language of section 260C.163, which is a legal question that we review de novo. *See In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54 (Minn. 2004).

I.

We first consider whether the district court erred in excluding the parents and mother's attorney from the proceeding while the child testified.[5]

[5] The County argues that the parents waived their challenge to the procedure used to take the child's testimony at trial because they did not object to that procedure in the district court. This assertion is incorrect. Father objected to taking the child's testimony before only the judge and the guardian ad litem; mother's attorney stated that listening to the child's testimony is "fundamental" to cross-examination. The parents' challenge to the procedure used to take the child's testimony therefore is preserved for appeal.

On the other hand, father's arguments regarding a self-represented party's rights *were* forfeited. Father asserts that references to "attorney" or "counsel" in subdivisions 6 and 7 of section 260C.163 must be read to encompass the right of a self-represented parent to participate and cross-examine witnesses. Father did not assert in the district court that as a self-represented party he had the same right to be present during the child's testimony as did mother's attorney. Nor did he make this argument before the court of appeals. Because father forfeited this issue by not raising it below, we do not address it. *See In re Custody of N.A.K.*, 649 N.W.2d 166, 177 n.10 (Minn. 2002) (declining to address an issue that was not raised in the district court or in the court of appeals).

We begin with the parents, who have a "right to participate in all proceedings on a petition" to terminate parental rights. Minn. Stat. § 260C.163, subd. 2(a). The right to participate, however, is not necessarily commensurate with the right to be present at all stages of these proceedings. The plain meaning of "participate" is "[t]o take part," *The American Heritage Dictionary* 905 (2d ed. 1982), that is, in this case, to take part in the proceedings on the County's petition to terminate. In the same statutory provision, however, the Legislature separately addressed a parent's right to "personally *attend* all hearings," Minn. Stat. § 260C.163, subd. 2(a) (emphasis added), and in other provisions, authorized the district court to "excuse the *presence* of" a parent from a hearing, *id.*, subds. 6–7 (emphasis added). We assume that the Legislature's use of "participate" to broadly describe a parent's right to take part in the proceedings on a county's petition, while also authorizing the district court to "excuse" a parent's "presence" in specific circumstances, *see* Minn. Stat. § 260C.163, subds. 6–7 (when "the child is questioned" or when it is in the child's best interests) is intentional. *See Nelson v. Schlener*, 859 N.W.2d 288, 294 (Minn. 2015) ("When the Legislature uses different words, we normally presume that those words have different meanings."). By using different words, the Legislature signaled that a parent's right to "participate" in the proceedings can be narrowed when circumstances require excluding the parent's physical presence at a particular hearing.

There is no dispute that the parents participated in the proceedings before the district court on the County's petition to terminate their parental rights. They received notice of scheduled hearings, they filed motions and disclosed witnesses and exhibits, and they attended the admit/deny hearing, pretrial hearings, and review hearings. They also attended

the trial and were present for the testimony of all witnesses other than the child. The question is simply whether they had a statutory right to be present for the child's testimony. The plain language of subdivisions 6 and 7 answers this question: the district court was authorized to *excuse* the parents from the trial while the child testified. *See* Minn. Stat. § 260C.163, subd. 7 (allowing the court to "temporarily excuse" a parent from a hearing); *id.*, subd. 6 (allowing the court to excuse a parent from the room when a child testifies "in accordance with subdivision 7"). The parents therefore did not have a statutory right to be present when the child testified informally.

We reach a different conclusion with respect to mother's attorney, based on the plain language of subdivisions 6 and 7. Unlike the decision to "temporarily excuse" a parent's presence at a hearing, nothing in the language of section 260C.163 suggests that the attorney for a party can be excluded from the hearing.[6] To the contrary, when describing who can be excused from the hearing, the Legislature identified only specific *parties*—a parent, a guardian, or a custodian—not the attorney who represents one of those parties. In other words, while the district court "may excuse the presence of the child's *parent, guardian, or custodian*," and may "temporarily excuse the presence of the *parent or guardian*," Minn. Stat. § 260C.163, subds. 6–7 (emphasis added), nothing in the plain language of these provisions authorized the district court to also exclude the parent's

[6] The Rules of Juvenile Protection Procedure distinguish between parties, who have rights to participate and be present for proceedings, and participants, whose rights are less extensive. *Compare* Minn. R. Juv. Prot. P. 32.01 (detailing the rights of parties), *with* Minn. R. Juv. Prot. P. 33.02 (listing the rights of participants). A child's parents, the child's guardian ad litem, and a child's legal custodian are parties, rather than participants, to a parental termination proceeding. Minn. R. Juv. Prot. P. 32.01, subds. 1, 3.

attorney from a hearing or proceeding. Moreover, subdivision 7 specifically directs that "[t]he attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian."

The court of appeals relied on this language in subdivision 7 to conclude that the district court did not err in excluding mother's attorney while the child testified. Specifically, the court of appeals concluded that the plain language of subdivision 7 allows either an attorney or a guardian ad litem to be present for the child's testimony but not both. *In re Welfare of Child of K.K. & K.M.R.*, 2021 WL 1343348, at *10. Further, relying on the "singular" form of the word "attorney," the court of appeals concluded that if an attorney is to be present during a child's testimony, the plain and unambiguous language of subdivision 7 allows only the *child's* attorney to be present, not the attorney for a parent. *Id.* (stating that by referring "to a singular 'attorney' in the same sentence as the 'child's guardian' " the plain language supported an interpretation of " 'attorney' to mean 'the child's attorney' ").

We disagree. Reading subdivisions 6 and 7 together, it is apparent that the "attorney" who "has the right to continue to participate in proceedings" when a parent or child is excluded is the attorney who represents the excluded party. This conclusion finds support in the plain language of subdivision 6, which allows the district court to exclude a parent "from the room where the child is questioned in accordance with subdivision 7." Minn. Stat. § 260C.163, subd. 6; *see Moore v. Robinson Env't*, 954 N.W.2d 277, 281 (Minn. 2021) (explaining that we "read the provisions" of a statute "in the context of" the entire statute). In other words, the attorney's opportunity to "continue to participate" arises

because the district court has excused "the parent or guardian of a minor from the hearing." Minn. Stat. § 260C.163, subd. 7. Surely the Legislature would have used more specific language, for example by allowing only "the child's attorney" to continue to participate, had it intended to exclude a parent's attorney from continuing to participate if the parent—the attorney's client—is excused. *See* Minn. Stat. § 645.16 (2020) (explaining that statutes should be construed to give effect to all provisions).

Finally, even if there is some uncertainty about the language in subdivision 7, the plain language in the Rules of Juvenile Protection Procedure expressly excludes "*counsel for any party*" from the category of those whose presence during a hearing can be excused. Minn. R. Juv. Prot. P. 38.04 (explaining that the decision to excuse a party is made "if it is in the best interests of the child to do so" (emphasis added)). Plainly, under this rule, mother's attorney was permitted to remain for the child's testimony even though mother was excused. *See also In re Welfare of J.R., Jr.*, 655 N.W.2d 1, 3 (Minn. 2003) (explaining that rules governing court procedure control over statutes in juvenile protection cases).

Thus, we conclude that the district court did not err by excusing the parents from the hearing during the child's testimony but did err in excluding mother's attorney during that testimony.

II.

Next, we consider whether the procedure used to take the child's testimony adequately protected the parents' statutory right "to be heard, to present evidence," and "to cross-examine witnesses." Minn. Stat. § 260C.163, subd. 8.

Initially, there was some question whether the child would testify at the trial. The County asked the district court, by motion, to take the child's testimony informally. *See* Minn. Stat. § 260C.163, subd. 6. In an order filed a few days before the trial started, the district court established the procedure to do so if the child testified. The child would appear remotely, with the testimony taken "in the presence of the Guardian Ad Litem," and the guardian ad litem could be cross-examined on the child's testimony. The district court concluded that this procedure would serve the child's best interests. On the second day of trial, when it became clear that the child would testify, mother's attorney sought clarification on who could be present during the child's testimony, stating that the ability to listen to the child's testimony "is fundamental to being able to confront and cross examine witnesses." The district court confirmed that the child's testimony would be taken with only the judge, the guardian ad litem, and the court reporter listening; no one else would be present or listening while the child testified. The district court would then summarize the child's testimony, and the guardian ad litem would be subject to cross-examination on the child's testimony. No other procedure was considered, and neither parent nor mother's attorney proposed or requested a different procedure.

Given their statutory right to participate in the proceedings, and the unqualified right "to cross-examine witnesses appearing at the hearing," Minn. Stat. § 260C.163, subd. 8, the parents argue that the procedures the district court used to take the child's testimony was "wholly insufficient." They note that the questions were framed by the judge, not the parties. In addition, they assert that the context provided by seeing and hearing a witness testify could not be captured in the district court's summary of the child's testimony. They

further contend that the child's guardian ad litem was not an adequate or permissible substitute for cross-examination of the child because, despite the role as an advocate for the child's best interests, a guardian ad litem does not necessarily have the personal knowledge to address matters that could be explored on cross-examination.

The County argues that parents do not have an absolute right to cross-examine a child witness because a child's best interests are paramount to a parent's statutory right to cross-examine witnesses.

The "paramount consideration" in proceedings to terminate parental rights is "the best interests of the child." Minn. Stat. § 260C.001, subd. 3. Termination of parental rights also implicates substantial and important interests of parents in a fundamental relationship with a child. *See, e.g.*, *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 133 (Minn. 2014) (explaining "the fundamental nature of parental rights"). Proceedings brought to terminate parental rights thus use procedures that aim to balance these interests. *See* Minn. R. Juv. Prot. P. 1.02(b) (identifying, among other purposes of the procedures in juvenile protection matters, a just determination that ensures "due process for all persons involved").

The parents were not afforded an opportunity to cross-examine *the child* on the informal testimony he provided; instead, they had the opportunity to cross-examine a different witness, the child's guardian ad litem, about the child's testimony. Although the parents did not pursue that opportunity, they also did not have a transcript of the child's testimony on which to frame a cross-examination—they had only the district court's

summary of the child's testimony.[7] We conclude that these procedures did not vindicate the parents' statutory right to cross-examination for the following reasons.

First, subdivision 8 of section 260C.163 "entitle[s]" parents "to cross-examine witnesses appearing at the hearing."[8] This language is unqualified; there are no words of exception or exclusion. The parents had no opportunity to cross-examine *the child*. The procedure used here imposed a limitation on the plain language of subdivision 8 that we cannot uphold. *See Great River Energy v. Swedzinski*, 860 N.W.2d 362, 367 (Minn. 2015) (declining to "superimpose" limiting language onto a statute). Put simply, based on the

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[7] The parents did not ask for a transcript, did not object to the guardian ad litem being used for cross-examination on the child's testimony, and did not ask the district court to pose particular questions to the child. Father's attorney asserted at oral argument that there was no indication from the district court that other modes of cross-examination would be allowed. The parents, however, hold the right of cross-examination. Even though we conclude that this right was not protected here, we do not endorse the suggestion that parents can stand by silently without pursuing other options, particularly one expressly authorized by statute. *See* Minn. Stat. § 260C.163, subd. 6 (allowing the court to "require counsel for any party" to submit questions before and after a child testifies informally).

[8] The County asserted in its brief that because he testified informally, the child did not appear at a hearing and, thus, the parents' statutory right to cross-examine him was not triggered. *See* Minn. Stat. § 260C.163, subd. 8 (stating that parents have a right "to cross-examine witnesses *appearing at the hearing*" (emphasis added)). We disagree. This was a public trial, *see* Minn. R. Juv. Prot. P. 38.01 (stating that hearings in juvenile protection matters are presumptively public), at which the County asked the court to take the child's testimony under the County's proposed procedures. Nothing in section 260C.163 suggests that a child who testifies informally does not appear at the trial; indeed, the child's testimony in this case is part of the official transcript. Further, nothing in the record suggests that the trial in this case was anything other than a session of court presided over by a judge, open to the public, to decide issues of fact and law relevant to the County's petition, including through witness testimony. *See T.G.G. v. H.E.S.*, 946 N.W.2d 309, 316 (Minn. 2020) (explaining that a judicial hearing "could be held in the courtroom").

plain language of subdivision 8, the parents had a right to cross-examine the child because the child appeared at the trial and provided testimony.

Second, nothing in the plain language of subdivision 6 of section 260C.163, which addresses examination of a child, suggests that the cross-examination right provided by subdivision 8 can be constrained to the point of excusing the testifying witness from cross-examination. *See In re Welfare of Children of S.R.K.*, 911 N.W.2d 821, 829 (Minn. 2018) (concluding that an interpretation that leaves some provisions of the statute superfluous is "untenable"). To the contrary, even when a child's testimony is taken informally and even when a parent is excused "from the room where the child is questioned," the Legislature plainly preserved the opportunity for cross-examination by allowing the court to "require counsel for any party . . . to submit questions to the court" before and after the child's testimony is taken. Minn. Stat. § 260C.163, subd. 6.

Third, the guardian ad litem is not an adequate stand-in for cross-examining a child who testifies. The guardian ad litem is appointed to protect the child's interests and advocate for the child's best interests. Minn. Stat. § 260C.163, subd. 5. This critically important role does not necessarily translate to the requisite knowledge and foundation to respond fully to questions that are posed on cross-examination based on a child's answers in direct examination. Further, a child's testimony may carry considerable weight in a district court's decision, particularly with respect to preference as to custody, *see, e.g.*, *In re Dependency & Neglect of Klugman*, 97 N.W.2d 425, 431 (Minn. 1959) (explaining that the testimony of a child of sufficient age on the child's preference for future custody may be entitled to considerable weight); *In re Welfare of M.M.B.*, 350 N.W.2d 432, 435 (Minn.

App. 1984) (giving considerable weight to testimony of child who was "sufficiently mature to make . . . a choice" as to future custody), and cross-examination is an important tool in testing credibility, *see, e.g.*, *State v. Ferguson*, 742 N.W.2d 651, 656 (Minn. 2007) (explaining purposes of cross-examination, including testing credibility). We are not convinced that cross-examination via a substitute witness can adequately delve into these issues.

Based on our analysis, we conclude that a child whose testimony is taken informally is subject to cross-examination. Further, we conclude that the procedures suggested in subdivision 6 of section 260C.163—including taking the testimony "outside the courtroom," requiring questions to be submitted in writing before and after the child testifies, and excluding the parents "from the room where the child is questioned"—will serve the child's best interests while allowing parents to exercise the statutory right of cross-examination. Nor are the procedures specifically identified in subdivision 6 an exhaustive list. *E.g.*, *LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 19 (Minn. 2012) (stating that the "word 'includes' is not exhaustive or exclusive" when used in a statute). Other procedures can be explored, depending on the circumstances of the case and the child's best interests. *See In re A.M. & R.W.*, 13 P.3d 484, 488 (Okla. 2000) ("[W]hen a court excludes a parent from the courtroom during a child's testimony, the court should consider alternative procedures to ensure the efficacy of the parent's cross-examination of the child."). For example, as authorized by subdivision 7, a parent's attorney can remain while the child is examined. This feature allows the attorney to consult with the client—

the parent—about the child's testimony and the options for cross-examination.[9] Additionally, an expedited transcript limited to the child's testimony could be provided, *see* Minn. R. Juv. Prot. P. 10.02 (allowing the district court to grant an "on the record request for a transcript"), to allow the attorneys and the parents to "submit additional questions to the court for the witness after questioning has been completed," Minn. Stat. § 260C.163, subd. 6. Other procedures may be appropriate in the context of case-specific circumstances. *See In re Welfare of Child of B.J.-M. & H.W.*, 744 N.W.2d 669, 673 (Minn. 2008) (stating that the "authority to regulate the procedures governing judicial proceedings is an inherent judicial power"); *In re Welfare of HGB*, 306 N.W.2d 821, 825 (Minn. 1981) (explaining that the "process due varies with the circumstances of the case").

At all times, of course, the procedures for taking a child's testimony informally and allowing parents to exercise the statutory right of cross-examination must be established consistent with the child's best interests. *See* Minn. Stat. § 260C.163, subd. 6 (allowing a child's testimony to be taken informally "when it is in the child's best interests to do so"). The district court has broad discretion in establishing the scope of examination. *See* Minn. R. Juv. Prot. P. 57.02(d) (allowing the district court to establish at a pretrial hearing whether the child will testify "and, if so, under what circumstances"); *State v. Greer*,

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[9] *See, e.g.*, *In re Dependency of A.D.*, 376 P.3d 1140, 1144–45 (Wash. Ct. App. 2016) (rejecting parent's challenge to exclusion during child's testimony based in part on the recess taken between the direct and cross-examination to allow discussion with counsel); *In re J.B.*, 616 S.E.2d 264, 277 (N.C. Ct. App. 2005) (describing procedures used to allow parent to "view and hear" the child's testimony and also consult with counsel); *S.C. Dep't of Soc. Servs. v. Wilson*, 574 S.E.2d 730, 735 (S.C. 2002) (explaining that a parent "should have reasonable opportunities to confer with counsel during the child's testimony" even if the parent is not in the room for the testimony).

635 N.W.2d 82, 89 (Minn. 2001) (stating that "trial courts have broad discretion to control the scope of cross-examination"). But we intend this point to be perfectly clear: a child's best interests are paramount, Minn. Stat. § 260C.001, subd. 3, and the district court must always consider a child's best interests when establishing the procedure for taking a child's testimony while also preserving the parents' right to cross-examine the child. We have carefully considered the record in this case, and we are confident that the procedure the district court implemented here was made with the child's best interests firmly in mind. We also recognize that the district court maintained a vigilant focus on the child's best interests while navigating a difficult and complex juvenile protection matter in the midst of a pandemic. While we conclude that the procedure used here did not fully vindicate the parents' statutory right to cross-examination, we have no doubt that the child's best interests were front and center for the district court in this case.

III.

Finally, because we have held that the district court erred in excluding mother's attorney during the child's informal testimony and the procedures used for the child's informal testimony did not fully protect the parents' statutory right to cross-examination, we consider whether a new trial is required. *See In re Welfare of R.M.M. III*, 316 N.W.2d 538, 542 (Minn. 1982) (concluding that the failure to comply with statutory requirement for a case plan did not require reversal "on the facts of this case"); *In re Welfare of J.M.S.*, 268 N.W.2d 424, 427–28 (Minn. 1978) (concluding that the failure to follow the procedure to establish good cause for voluntary termination "is not grounds for reversal," and noting that substantial evidence supported the termination decision).

The parents argue that their inability to cross-examine the child was prejudicial because they could not ascertain the child's maturity to express a preference or alternative reasons for the preference the child stated. In the absence of this opportunity, they argue, they could not credibly challenge the evidence provided by other witnesses, who offered testimony to corroborate the child's stated preferences. We disagree.

The district court's findings and decision are well-supported by the evidence in the record. Over 20 witnesses testified at the trial, including medical professionals, school officials, therapists for the parents and the child, the child's foster parent, and the two guardians ad litem who worked with the child. Testimony was also presented by County employees who worked with the parents and the child in the months leading up to the trial in this case. Exhibits offered by the County and the parents were admitted into evidence.

The district court found based on testimony from multiple witnesses that with one exception the child had refused to see his parents for almost one year and had consistently stated to several witnesses, including his foster parent, two guardians ad litem, and his attorney, that he did not want to return to his parents' care. Detailed findings addressed the child's social, educational, emotional, health, and future needs; the child's relationship with his parents and foster parents; and the credibility of various witnesses. The district court also addressed in its findings the parents' lack of or very limited cooperation with the requirements of the case plan. All of these findings adequately support the district court's decision to terminate the parents' rights, *see* Minn. Stat. § 260C.301, subd. 1(b)(5) (authorizing termination where reasonable efforts have failed to correct the conditions that led to the child's placement out of the parents' home), and the court's conclusion that

termination is in the child's best interests. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385–87 (Minn. 2008) (affirming decision to terminate parental rights where findings regarding child's best interests were supported by substantial evidence); *see also* Minn. Stat. § 260C.317, subd. 1 (requiring clear and convincing evidence to terminate parental rights); *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) (reviewing the record to determine whether clear and convincing evidence supported termination decision).

Thus, there is sufficient, and substantial, evidence in the record to support the district court's findings, conclusions, and decision to terminate the parents' rights to their child. The district court's findings and conclusions are thorough and detailed. We therefore conclude that the error in the procedure used to take the child's informal testimony does not require a new trial.[10]

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

[10] In reaching this conclusion, we reject father's suggestion to apply the prejudice standard used in cases involving an alleged due process violation. *See In re Welfare of Child of B.J.-M. & H.W.*, 744 N.W.2d 669, 673 (Minn. 2008). Neither parent alleged that their due process rights were violated by the procedure used to take the child's testimony. *In re Custody of N.A.K.*, 649 N.W.2d at 177 n.10 (declining to address a claim that was not raised in the lower courts). In light of the substantial evidence in the record, we also conclude it is unnecessary to require a new trial in an exercise of our supervisory authority, as father suggests.