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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1559**

In the Matter of the Welfare of the Child of: C. M. P. and W. A. S., Parents.

**Filed April 10, 2017
Affirmed
Reilly, Judge**

Chippewa County District Court
File No. 12-JV-16-351

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W.A.S., St. Cloud, Minnesota (pro se respondent)

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Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant-mother challenges the adjudication of her child as in need of protection or services (CHIPS) and argues that (1) clear and convincing evidence does not support the district court's determination that the child lacked (a) food, clothing, shelter, education, or other necessary care; (b) proper parental care; and (c) a safe environment; (2) respondent

Chippewa County violated Minn. Stat. § 260C.175 (2016) when it removed her child from her care outside of the presence of a police officer and when there was no immediate danger to the child; and (3) evidence of prior CHIPS adjudications and voluntary termination of parental rights (TPR) proceedings was improperly admitted at trial. We affirm because (1) clear and convincing evidence supports the district court's determination that the child is in need of protection or services, (2) the procedural violations of Minn. Stat. § 260C.175 do not justify dismissal of the current CHIPS adjudication, and (3) mother's evidentiary challenges are not properly before this court.

FACTS

On Saturday, June 18, 2016, at approximately 12:15 a.m., mother brought her three-year-old child to the Granite Falls emergency room with concerns that an adult male friend, Casey, sexually abused the child. The district court found that mother expressed concern that Casey wiped the child's bottom "real hard" and wanted a nurse to examine the child's hymen to ensure that it was still intact and that the child had not been penetrated.¹ Mother reported that she allowed Casey to watch the child approximately one week earlier and that Casey wanted to give the child a bath, even though mother repeatedly told Casey that the child recently bathed and did not need a bath at that time. The district court further found that mother also reported that after Casey watched the child, there was a noticeable change in the child's behavior, including swearing, hitting and grabbing the genitalia of men, and

¹ Mother contested this factual finding at oral argument. Review of the record conclusively shows that this finding is supported by the evidence. The record is also clear that mother did not know Casey's last name.

hysteria during diaper changes.² Mother recalled one instance in particular where the child yelled “No Casey” during a diaper change. Mother also reported that she only brought the child in for emergency care at the behest of one of her female friends, who observed the redness and irritation in and around the child’s genitals.

After examining the child, the treating physician noted the following observations: (1) mother knew about the perineal redness and irritation several days prior to the examination; (2) the child’s feet and ankles were caked in dirt; (3) mother became uncooperative and threatened to leave after the physician informed mother that he must report the alleged abuse to Chippewa County Family Services; (4) mother brusquely set the child on the examination table and hastily removed the child’s clothing, causing the child to become upset; (5) the genital irritation observed could be the result of sexual or physical trauma, or poor hygiene due to dried stool in the child’s genitals; and (6) the child continued to demonstrate developmental delays—at the time of the emergency room visit, the child was three years and eight months old but was in diapers, unable to walk, and exhibited limited verbal skills.

On Sunday, June 19, 2016, a child-protection-services worker visited mother at her home to implement a safety plan; a local police officer accompanied the child-protection-services worker during this visitation. As part of this safety plan, mother agreed that the child would remain in the care of mother’s friend and would not be returned to mother’s home until a later date.

² Mother also contested these factual findings at oral argument. After an extensive review of the record, we conclude that these finding are supported by the evidence.

Although there were no significant changes in the child's environment or condition after June 18, 2016, the county and the Granite Falls Police Department reconsidered the safety plan on Monday, June 20, 2016, and decided to initiate a peace officer's hold to take the child into emergency protective care. That same day, a county social worker transported the child from the home of mother's friend to a Chippewa County foster home. A police officer was not present at this time and an emergency protective care order had not been sought or filed.

On Tuesday, June 21, 2016, the county filed a petition alleging that the child was in need of protection or services because the child was without (1) necessary food, clothing, shelter, education or care required for the child's physical or mental health; (2) proper parental care because of the emotional, mental, or physical disability, or immaturity of mother; and (3) a proper environment. That same day, the district court held an emergency protective care hearing. Based on the evidence presented, the contents of the file, and the proceedings, the district court determined that the petition established a prima facie showing that the child was in need of protection or services and that the child's health or safety would be endangered if the child was returned to mother's care. The district court concluded that legal and physical custody must remain with the county.

At the CHIPS trial held on August 26, 2016, the county introduced evidence of mother's prior interactions with child protection services, including previous CHIPS adjudications and the associated granting of TPR petitions. The district court filed an order on September 1, 2016, finding that the county proved by clear and convincing evidence that the child was in need of protection or services. Mother appeals.

DECISION

I. Clear and convincing evidence supports the district court's determination that the child is in need of protection or services.

A successful CHIPS petition requires proof of an enumerated condition for child protection or services and a resulting need for protection or services. Minn. Stat. § 260C.007, subd. 6 (2016). Findings in CHIPS proceedings must be proved by clear and convincing evidence. *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998). We therefore reverse a CHIPS determination if a necessary finding is clearly erroneous or unsupported by substantial evidence. *Id.* Generally, clear error occurs only when “review of the entire record leaves th[is] court with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

A. Mother was unable or unwilling to provide the requisite level of required care.

A CHIPS petition may be granted on the finding that the child “is without necessary food, clothing, shelter, education, *or other required care for the child's physical or mental health* or morals because the child's parent . . . is unable or unwilling to provide that care.” Minn. Stat. § 260C.007, subd. 6(3) (emphasis added). Mother argues that the county provided no evidence that the child was without food, clothing, shelter, education, or other required care.

On the contrary, the record was replete with evidence that mother was unwilling to provide her child with required care. Mother was unwilling to bring the child in for immediate medical attention, even though she was aware of the alleged sexual assault and the severe irritation and soreness the child experienced as a result of an assault, or poor

hygiene, or both. Mother only sought medical attention—several days after the alleged assault occurred—at the urging of her friend; and mother threatened to deny her child medical care to avoid child protection services. The record contains clear and convincing evidence that mother was unable or unwilling to provide the care that her child required.

B. Mother was unable or unwilling to provide proper parental care because of a state of immaturity.

A CHIPS petition may also be granted on the finding that a child “is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child’s parent, guardian, or other custodian.” Minn. Stat. § 260C.007, subd. 6(8). Mother asserts that the county failed to present any evidence that she suffers from a disability that would prevent her from providing proper care. The district court found that mother showed an unwillingness to cooperate with child protection workers and initially refused to allow the treating physician to treat the child. Based on these findings, the district court determined that the child lacked proper care within the meaning of the statute and therefore required protection or services. Clear and convincing evidence supports the district court’s conclusions.

Mother permitted a male acquaintance to watch the child alone, despite her reservations, and, after she discovered that the male acquaintance may have sexually abused the child, she waited several days before seeking medical treatment. When mother finally sought medical treatment, she did so only at the insistence of her friend. Mother testified that she was reluctant to seek medical treatment due to her prior contacts with child protection; she also threatened to leave the emergency room without allowing her

child to receive medical care. The following day, when the child-protection-services worker arrived at mother's residence to investigate the alleged sexual assault, mother yelled at the county employee and slammed the door in her face. The nature of the emergency room visit and follow-up investigation is clear and convincing evidence of mother's immaturity and inability to provide proper parental care.

Nevertheless, mother contends that the term "immaturity" includes only parents who are physically young, not parents who lack the mental capacity to parent. *The American Heritage Dictionary* defines immaturity as "not fully developed . . . [or] marked by or suggesting a lack of the normal maturity." *The American Heritage Dictionary* 902 (3rd ed. 1992); *contra Black's Law Dictionary* 1147 (10th ed. 2014) ("The state, or condition of being under legal age."). Clear and convincing evidence supports the district court's conclusion that mother lacked normal maturity and failed to provide her child with proper parental care. The district court did not err when it concluded that the child was in need of protection or services pursuant to Minn. Stat. § 260C.007, subd. 6(8).

C. The child's condition or environment was injurious or dangerous.

A child may also be in need of protection or services if the child "is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others." Minn. Stat. § 260C.007, subd. 6(9). Mother argues the record does not establish that the child was exposed to criminal activity or dangerous conditions in the home. While the statute recognizes that criminal activity is often indicative of an environment that is dangerous or injurious to children, the statute does not limit dangerous or injurious conditions or environments to "the exposure of a child to criminal activity in the child's

home.” *Id.* The treating physician, the examining nurse, and the child-protection-services workers all testified that there were concerns regarding the child’s home, condition, or environment; and this testimony is clearly consistent with other aspects of the record. The treating physician’s report noted concerns of possible sexual assault, cleanliness, mother’s resistance to aid and treatment, and the child’s mental and physical developmental delays. Common sense does not require, and the statute does not indicate, that the evidence must establish criminal activity or immediate physical danger inside of the home—evidence of a general condition or environment that is injurious or dangerous to the child is sufficient.³

II. Although removal of the child outside of the presence of a police officer and without a court order violated Minn. Stat. § 260C.175, dismissal of the CHIPS adjudication is not the proper remedy for the procedural violation.

Mother next argues that the county violated Minn. Stat. § 260C.175 by removing the child from her care without a police officer present. Mother contends that this government action violated her fundamental parental rights and that dismissal of this CHIPS adjudication is the appropriate remedy.

The child protection statute provides that a child may not be taken into immediate custody except (1) with a properly issued court order or warrant or (2) by a police officer when the child is found in conditions or an environment which endangers the child’s health or welfare. Minn. Stat. § 260C.175, subd. 1(1)-(2). With respect to the first requirement,

³ At the very least, the evidence shows that the child was subjected to physical injury when Casey wiped her so hard that she required a visit to the emergency room to assess her physical wellbeing.

it is undisputed that the county did not have a court order authorizing it to take the child into custody. *Id.*, subd. 1(1). For that reason, we need not address the first requirement. The county, however, argues that it operated under the authority of a police officer when it took the child into custody pursuant to a police officer hold. *Id.*, subd. 1(2). With regard to the second requirement, it is undisputed that a police officer was not present when the county removed the child. Mother therefore contends that removal of the child was invalid and that dismissal of the instant CHIPS adjudication is the only appropriate relief. We reject this argument.

In this case, a child-protection-services worker implemented a safety plan—which removed the child from mother’s care and placed the child in the care of mother’s friend—in the presence of a police officer. Two days later, the Granite Falls Police Department issued a peace officer’s hold for the child, and the county complied with the requirements of the hold when it removed the child. And within 24 hours of the removal, the district court held an emergency protective care hearing, and, shortly thereafter, it issued an emergency protective care order in accordance with the statutory requirements. We note, without deciding, that on this particular record, this sequence of events potentially cured the procedural violations at issue here. *Cf. 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 harmless error). We strenuously caution the county against similar procedural violations in the future.

“The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child,” Minn. Stat. § 260C.001, subd. 2(a) (2016), and “[t]he law relating to the juvenile protection proceedings shall be liberally construed to carry out

these purposes,” *id.*, subd. 4 (2016). In this case, clear and convincing evidence supports the district court’s determination that the child was in need of protection or services. Given that the paramount consideration in all CHIPS cases is “the health, safety, and best interests of the child,” dismissal of the CHIPS action is not warranted, despite the procedural violation.⁴

III. Failure to move for a new trial precludes mother from raising evidentiary challenges on appeal.

Finally, mother argues that prior CHIPS adjudications and TPR proceedings were admitted into evidence in violation of Minnesota Rules of Evidence 404(b) and 403. Mother, however, did not move for a new trial. It is a well-established rule of law in Minnesota that objections to evidentiary rulings, in both adult and juvenile proceedings, “are subject to appellate review only if there has been a motion for a new trial in which such matters have been assigned as error.” *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994) (declining to review evidentiary issues in a CHIPS determination where appellant failed to bring a motion for new trial) (quoting *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986)), *review denied* (Minn. Nov. 29, 1994). This rule applies even if appellants raise timely objections at trial. *Id.* Mother is precluded from raising her

⁴ Mother also alleged that removal under Minn. R. Juv. Prot. P. 28.02 subd. 1, was inappropriate; but mother does not provide sufficient legal authority to support her argument. Because mother failed to adequately brief her argument with regard to rule 28.02, we decline to address this argument. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issues not adequately briefed are not properly before appellate courts).

evidentiary challenges on appeal because she failed to allow the district court to correct its alleged errors.⁵

Affirmed.

⁵ We also note that mother’s evidentiary arguments are unavailing. Before making a disposition in a CHIPS case, a district court “may consider any report or recommendation made by the responsible social services agency, . . . guardian ad litem, . . . or other authorized advocate for the child or child’s family.” Minn. Stat. § 260C.193, subd. 2 (2016). The district court may also consider “any other information deemed material by the court.” *Id.* Review of the record conclusively shows that the district court did not abuse its discretion in its determination to admit evidence of mother’s prior CHIPS and TPR proceedings. This is especially true as Minn. Stat. § 260C.201, subd. 2(a)(1)-(4) (2016), requires the district court to make a written finding that reasonable efforts have been made to prevent out-of-home placement and that out-of-home placement is in the best interests of the child. In this case, the mother’s prior child protection cases detailed the efforts that were made to prevent out-of-home placement of the child.