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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1795**

In the Matter of the Welfare of the Child of: R. S., Parent

**Filed April 24, 2017
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-JV-16-1040

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Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant-mother challenges the adjudication of her child as a child in need of protection or services. Because clear-and-convincing evidence supports the district court's determination that her child is in need of protection or services because the child would reside with a perpetrator of child abuse, we affirm.

FACTS

Appellant-mother R.S. is the biological mother of R.P., born in 2011.¹ In April 2016, respondent Ramsey County Community and Human Services Department (department) filed a petition alleging R.P. was a child in need of protection or services (CHIPS) and asked the district court to place R.P. in emergency protective care. The CHIPS petition alleged that in March 2016, the department received a report that mother and R.P. were residing with J.R. The petition further alleged that in December 2014, the department had made a determination, based on J.R.'s alleged physical and sexual abuse of his minor daughter L.R., that J.R. had maltreated L.R. J.R. was L.R.'s legal custodian at the time of the maltreatment determination. In July 2015, J.R. voluntarily terminated his parental rights to L.R.

The CHIPS petition alleged that mother “has allowed [R.P.] to reside with an untreated sex offender and has failed to demonstrate that she understands the risk [J.R.] poses to [R.P.]” The petition requested that R.P. be adjudicated a CHIPS on four grounds, including that R.P. “resides with or would reside with a perpetrator of domestic child abuse or child abuse.”

The district court held a trial on the CHIPS petition. A nurse from Midwest Children's Resource Center (MCRC), four department social workers, and mother testified at the trial. J.R. and L.R. did not testify. Following the trial, the district court adjudicated R.P. a CHIPS. Mother appealed, without moving for a new trial.

¹ R.P.S. is the adjudicated father of R.P. R.P.S. did not participate in the CHIPS proceedings.

DECISION

There is a “presumption that a natural parent is a fit and suitable person to be entrusted with the care of his or her child.” *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). “Ordinarily, it is in the best interest of a child to be in the custody of his or her natural parents.” *Id.* Thus, a child only meets the statutory definition of a “child in need of protection or services” under Minn. Stat. § 260C.007, subd. 6 (2016), when “one of the enumerated child-protection grounds exists and the child needs protection or services as a result.” *In re Welfare of the Child of S.S.W.*, 767 N.W.2d 723, 724-25 (Minn. App. 2009). “To be proved at trial, allegations of a petition alleging a child to be in need of protection or services must be proved by clear and convincing evidence.” Minn. Stat. § 260C.163, subd. 1(a) (2016).

“On appeal of a juvenile-protection order, we review the juvenile court’s factual findings for clear error and its finding of a statutory basis for the order for abuse of discretion.” *In re Welfare of the Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), *review denied* (Minn. July 20, 2015). This court closely inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *S.S.W.*, 767 N.W.2d at 733. “Considerable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.” *Id.* (quotation omitted). In a case such as this, where mother did not move for a new trial, our review is limited to whether the record supports the district court’s findings of fact and whether the findings of fact support the district court’s conclusions of law. *Id.*

Mother's arguments on appeal generally attack the sufficiency of the evidence to sustain the CHIPS adjudication. Mother invites us to reassess the district court's express determination that mother's testimony was "contradictory and not credible." But witness credibility determinations are for the finder of fact, and we defer to such determinations on appeal. *Id.* Mother also invites us to reweigh the trial evidence, passionately arguing that if the evidence is properly weighed, it cannot sustain the CHIPS adjudication. But this court does not find facts or reweigh evidence on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see also In re Welfare of R.T.B.*, 492 N.W.2d 1, 3-4 (Minn. App. 1992) (noting that on appeal this court must defer to the trial court's assessment of the weight to be given to witnesses' testimony). We therefore limit our review to whether the evidence clearly and convincingly supports the district court's findings and whether those findings support the statutory basis for the CHIPS adjudication.

Minn. Stat. § 260C.007, subd. 6, defines "child in need of protection or services" and lists 16 grounds for such a determination. In adjudicating R.P. a CHIPS, the district court relied on four of those grounds, including that R.P. "resides with or would reside with a perpetrator of domestic child abuse as defined in subdivision 13 or child abuse as defined in subdivision 5 or 13." Minn. Stat. § 260C.007, subd. 6(2)(iii).

Minn. Stat. § 260C.007, subd. 13 (2016), defines "[d]omestic child abuse" as:

- (1) any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means;
- (2) subjection of a minor family or household member by an adult family or household member to any act which constitutes a violation of sections 609.321 to 609.324, 609.342, 609.343, 609.344, 609.345, or 617.246; or

(3) physical or sexual abuse as defined in section 626.556, subdivision 2.

Minn. Stat. § 260C.007, subd. 5 (2016), defines “[c]hild abuse” as “an act that involves a minor victim that constitutes a violation of” specified criminal statutes, or “that is physical or sexual abuse as defined in section 626.556, subdivision 2, or an act committed in another state that involves a minor victim and would constitute a violation of one of [the specified criminal statutes] if committed in this state.”

The Record Establishes that J.R. is a Perpetrator of Abuse

We first consider whether the record clearly and convincingly establishes that J.R. is a perpetrator of domestic child abuse or child abuse. The district court found that J.R. admitted that he had physically abused L.R. Although the district court did not make an express finding that J.R. sexually abused L.R., the district court found that “[the department] accurately determined [J.R.] to be an untreated sex offender,” implicitly finding that J.R.’s alleged sexual abuse of L.R. had occurred.²

The record sustains the district court’s abuse findings. At trial, Margaret Carney, a child-abuse case manager at MCRC, testified that she interviewed L.R. twice in November 2014, when L.R. was 12 years old. Carney’s reports documenting the interviews were received as evidence. During the first interview, L.R. reported that “she had been whipped with a cord” by J.R. Carney testified that she observed “pattern injuries” consistent with L.R.’s statement that she had been whipped with a cord. Carney testified that a doctor at MCRC diagnosed L.R. as having been physically abused.

² The only evidence of sexual abuse at trial regarded L.R.’s allegations against J.R.

Carney also testified that she asked L.R. a screening question regarding sexual abuse during the first interview and that L.R. reported that she had been sexually abused. Carney asked L.R. if she would be willing to discuss the sexual abuse and L.R. agreed to have another interview at a later time. Carney testified that during the second interview, L.R. reported that J.R. “sexually abused her on a semi-regular basis over time, . . . leading from backrubs into full sexual intercourse.” Carney testified that she was initially concerned about L.R.’s credibility because L.R. said that “she was there because she didn’t want to live with her dad anymore.” Carney reported that she ultimately believed L.R.’s sexual-abuse allegations because L.R. offered additional details regarding specific instances of abuse and described experiences that were consistent with those of other children who had disclosed abuse. Carney also testified that a doctor at MCRC diagnosed L.R. as having been sexually abused.

Becky Hilderman, a department child-protection worker, testified that she investigated the allegations that J.R. abused L.R. Hilderman prepared an intake-assessment report summarizing her investigation, which was received as evidence. Hilderman testified that she interviewed J.R. and L.R., and that J.R. admitted hitting L.R. with a cord and causing her physical injuries. Hilderman testified that J.R. denied the sexual abuse, stating that he suffered from erectile dysfunction, had been seen at a clinic, and had several surgeries regarding that condition.

Hilderman testified that she made a maltreatment determination based on J.R.’s physical abuse of L.R., “because [L.R.] had injuries and [J.R.] had admitted to causing those injuries.” Hilderman testified that she made a maltreatment determination based on

J.R.’s sexual abuse of L.R., because she “felt there was a preponderance of evidence to say that that did happen” and she believed that L.R.’s allegations regarding the sexual abuse during her interview with Carney were credible. Hilderman testified that J.R. did not appeal the maltreatment determinations.

As to the district court’s finding that J.R. is an “untreated” sex offender, Rebecca Schultz, a department child-protection worker who investigated the report that mother and R.P. were residing with an untreated sex offender, testified that her understanding is that J.R. has not completed sex-offender treatment. There is no evidence in the record suggesting that J.R. has completed such treatment.

Our review of the record satisfies us that the district court’s explicit finding that J.R. physically abused L.R., as well as its implicit finding that J.R. sexually abused L.R., are not clearly erroneous. These findings support the determination that J.R. is a perpetrator of abuse for purposes of Minn. Stat. § 260C.007, subd. 6(2)(iii).

R.P. Would Reside with a Perpetrator of Abuse

We next consider whether the district court clearly erred by implicitly finding that R.P. “resides with or would reside with” J.R. for the purposes of Minn. Stat. § 260C.007, subd. 6(2)(iii). Schultz testified that she was assigned to investigate a report that mother “was residing in a home where . . . an untreated sex offender [was] living,” that R.P. resided in the home with her, and that there were concerns about R.P.’s safety. Schultz testified that when she began her investigation, she attempted to call mother at a phone number that went directly to J.R. J.R. told Schultz that mother did not want Schultz to contact her, that any communication needed to go through him, and that he would not give Schultz mother’s

phone number. Schultz testified that she was unable to find another phone number for mother.

Schultz further testified that after unsuccessfully attempting to contact mother by phone, she started going to the house where J.R., mother, and R.P. reportedly lived. Schultz testified that when she went to the home by herself, no one answered the door. Schultz testified that when she and the police visited the home with a “pick-up order to get [R.P.],” J.R. would not let anyone in the home. Schultz further testified that because the department could not get cooperation from mother and there was reason to believe that R.P. was still residing in the home, the department requested a court order for emergency protective care of R.P.

Mother testified that she was currently in a relationship with J.R. and referred to him as her fiancé. Mother also testified that she continued to see J.R., but that J.R. did not come to her home. However, mother testified that the home in which she resided was leased by J.R. and that she and J.R. paid the bills for the home. Mother testified that J.R. previously resided at the home, but that J.R. moved out so mother could regain custody of R.P.

The record—including mother’s own testimony—clearly and convincingly establishes that R.P. would reside with J.R. if not for the department’s involvement and the removal of R.P. from mother’s care.

R.P. Needs Protection or Services

Lastly, we consider whether R.P. needs protection or services because he would reside with J.R. if not for the department’s involvement and his removal from mother’s

care. See *S.S.W.*, 767 N.W.2d at 732 (holding that a child does not meet the statutory definition of CHIPS “unless one of the enumerated child-protection grounds exists and the child needs protection or services as a result”).

Schultz testified that child-protective services are necessary because J.R. “continues to be a threat of sexual abuse to children and will continue to be that [threat] until he completes a sex offender treatment program” and mother “would not move [R.P.] out of the home willingly to protect him.” Schultz also testified that “there are concerns about [mother’s] ability to protect her child and to put her child’s needs in front of her own needs.”

Clarence Powers, a department case manager assigned to the underlying case, testified that based on mother’s ongoing relationship with J.R., he believes that mother does not understand the potential danger that J.R. poses to R.P. Powers testified that he developed a case plan for mother that included a parenting class and that the parenting class was important because it would assess mother’s parenting skills and help her to better understand how R.P. was at risk.

R.P.’s guardian ad litem (GAL) testified that he was concerned about mother’s ability to parent R.P. The GAL expressed concern about R.P. living with J.R. given the prior determination that J.R. had maltreated L.R. The GAL testified that he was also concerned that the previous maltreatment determination against J.R. occurred while mother was living with J.R. The GAL testified that it was unrealistic for mother to believe that she could protect R.P. because she is not with him all hours of the day and J.R.’s abuse of L.R. occurred while mother was not at home.

Mother testified that she and R.P. resided with J.R. the entire time that she had been in a relationship with J.R. Mother acknowledged that she and R.P. were living with J.R. when J.R. physically abused L.R. Moreover, Carney's report regarding her interview with L.R. indicates that some of J.R.'s sexual abuse of L.R. occurred while mother and R.P. were residing with J.R.

Mother testified that she has a responsibility to keep R.P. safe. She also testified that she was aware of the allegations that J.R. physically and sexually abused L.R. and that J.R. admitted the physical abuse. When asked whether she was aware that J.R. admitted to "hitting [L.R.] with an Xbox cord six to seven times," mother responded that she was "not aware of that" and agreed that such conduct constituted physical abuse. Mother testified that J.R.'s admission concerned her but that she was not concerned about R.P.'s safety because she was "there with [R.P.] all the time" and would not let anyone abuse him. Mother further testified that R.P. would tell her if he were abused. Mother also testified that she left R.P. in J.R.'s care while she was at work, "[e]very once in a while."

As to J.R.'s sexual abuse of L.R., mother testified that she did not believe that J.R. sexually abused L.R. because she was with J.R. "all the time" and that when mother worked outside the home, L.R. was at school. However, mother admitted that she was unaware that L.R. had alleged that J.R. abused her in the home that mother and R.P. shared with J.R. while mother was working and L.R. was supposed to be at school. Nonetheless, mother testified that she is not concerned about J.R. being around R.P.

In adjudicating R.P. a CHIPS, the district court found:

The Court finds [mother's] disregard of [J.R.'s] status as an untreated sex offender to be troubling. [Mother] allowed [J.R.] to have access to her minor child, [R.P.], and demonstrated that she is unable and unwilling to protect [R.P.] from the risk of threatened sexual abuse. [Mother] has continuously failed to establish that she appreciates the threat of harm [J.R.] poses to her minor child, [R.P.]. [Mother] does not believe the allegations of sexual abuse made by [L.R.] and does not believe that [J.R.] poses any risk to her child. This contradicts [mother's] admission that she was aware [J.R.] admitted to physically abusing his own minor child, [L.R.], and that the abuse of [L.R.] appears to have occurred when [mother] was residing with [J.R.]

The record evidence clearly and convincingly supports the district court's findings of fact, and those findings establish that R.P. needs protection or services.

Mother's Arguments

Mother makes several arguments regarding why the evidence was inadequate to sustain the CHIPS adjudication. For example, mother argues that the district court "erred in failing to determine what an, 'Untreated Sex Offender,' is" and argues that "there is *no such thing* as an, 'Untreated Sex Offender.'" Mother seems to argue that because the CHIPS statute does not expressly state that a child who resides with an "untreated sex offender" is a CHIPS, a CHIPS adjudication cannot be based on those circumstances. *See* Minn. Stat. § 260C.007, subd. 6. We disagree with this narrow reading of the CHIPS statute. The statute lists 16 grounds that may serve as a basis for a CHIPS adjudication. *See id.* The grounds generally describe circumstances that may support a CHIPS adjudication and nothing in the statute suggests that the grounds are limited to any particular fact pattern. Thus, the absence of the phrase "untreated sex offender" from the CHIPS statute does not prevent a district court from concluding that a person's status as an

untreated sex offender is relevant when determining whether one of the enumerated statutory grounds for a CHIPS adjudication exists.

Mother also argues that “there has never been a legal adjudication, or even a legal charge, that [J.R.] is a sex offender” and contends that there was no legal basis to determine that J.R. was an “untreated sex offender.” (Emphasis omitted.) The lack of a criminal charge or adjudication stemming from J.R.’s sexual abuse of L.R. is of no effect. The issue here is whether the department proved by clear-and-convincing evidence that J.R. sexually abused L.R. We have determined that the department met its burden, which is distinct from whether a prosecutor can satisfy the beyond-a-reasonable-doubt standard required for a criminal conviction. *See State v. Her*, 862 N.W.2d 692, 694-95 (Minn. 2015) (stating that the U.S. Constitution “indisputably entitles a criminal defendant to a jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt” (quotations omitted)).

Mother further argues that the district court erred by “failing to determine if the state had the authority . . . to use a maltreatment finding that an individual is an ‘untreated sex offender’” as a basis for a CHIPS adjudication and “in determining that the [state] had the authority to remove a child from a parent because of an allegation that someone living in the house is an, ‘untreated sex offender.’” These arguments miss the mark. To obtain a CHIPS adjudication, a petitioner must prove the allegations supporting a statutory adjudication of CHIPS by clear-and-convincing evidence. Minn. Stat. § 260C.163, subd. 1(a). The department has done so here.

Contrary to mother's assertion, this is not a case in which a CHIPS adjudication is based solely on a prior maltreatment determination. Such an adjudication would be improper. As the department noted at oral argument, a maltreatment determination may be based on the preponderance of the evidence, whereas a CHIPS adjudication must be based on clear-and-convincing evidence. *Compare* Minn. Stat. § 260C.163, subd. 1(a) (CHIPS adjudication), *with* Minn. Stat. § 256.045, subd. 3b(a) (2016) (maltreatment determination). Although the district court's order notes that it heard "extensive testimony regarding the maltreatment determination of sexual abuse made against [J.R.]," it also notes that it heard extensive testimony regarding the underlying "disclosures made by [L.R.]" In sum, the department did not rely solely on its prior maltreatment determination. Instead, the department presented clear-and-convincing evidence that the allegations underlying the maltreatment determination are true.

Mother argues that the district court erred by basing its finding that J.R. sexually abused L.R. on "allegations of over two years ago that have since been fully recanted." Mother repeatedly asserts that L.R.'s allegations of sexual abuse were "fully recanted," but there is little evidence in the record to support this assertion. Mother testified that L.R. stated that "she was sorry for what she did to [J.R.]," "[J.R.] didn't deserve this," and that L.R. would "do anything in her power to rekindle [sic] her story, to get back with her father because she did not want to be in the system anymore." The district court expressly found mother's testimony "contradictory and not credible." And it expressly found Carney's and Hilderman's testimony regarding L.R.'s allegations credible, as well as Carney's testimony that even if L.R. recanted, it would not change her opinion regarding whether L.R.'s report

of abuse was credible. We defer to these credibility determinations. *See S.S.W.*, 767 N.W.2d at 733 (noting that this court gives district courts considerable deference because a district court is in a better position to assess the credibility of witnesses).

Mother further argues that the district court “erred in relying solely on hearsay testimony” for its CHIPS adjudication. “‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is generally not admissible. Minn. R. Evid. 802. The district court overruled mother’s hearsay objections at trial.

Failure to move for a new trial after a CHIPS hearing results in a loss of the right to seek appellate review of evidentiary rulings, unless lack of review would result in fundamental unfairness. *See In re Welfare of D.N.*, 523 N.W.2d 11, 12 (Minn. App. 1994), *review denied* (Minn. Nov. 29, 1994). Because mother did not move for a new trial, we do not consider whether the district court erred in allowing hearsay evidence at trial. Moreover, mother’s hearsay argument focuses on the weight of the evidence, and not its admissibility. For example, she asserts that “[h]earsay statements based on allegations of over two years that have since been fully recanted are not enough of a basis to determine that [J.R.] is a sex offender.”

Although we acknowledge that this may have been a close case, we defer to the district court’s weighing of the evidence. *See R.T.B.*, 492 N.W.2d at 3-4. Our close inquiry into the sufficiency of the evidence satisfies us that Carney’s and Hilderman’s testimony, along with Carney’s reports regarding her interviews with L.R., clearly and convincingly establish J.R.’s abuse of L.R.

In sum, none of mother's arguments persuades us that the district court erred in adjudicating R.P. a CHIPS.

Conclusion

In conclusion, mother's arguments do not convince us that the district court abused its discretion in adjudicating R.P. a CHIPS under Minn. Stat. § 260C.007, subd. 6(2)(iii). Because this statutory ground adequately supports the district court's CHIPS adjudication, we affirm the adjudication based solely on this ground without reviewing the district court's reliance on other statutory grounds. *See S.S.W.*, 767 N.W.2d at 724-25 (stating that a child meets the statutory definition of CHIPS if "one of the enumerated child-protection grounds exists and the child needs protection or services as a result").

Affirmed.