

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0219**

In the Matter of the Welfare of the Children of:
G. M. and J. H., Parents.

**Filed June 12, 2017
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-JV-16-2072

Renee A. Michalow, Michalow Law Office, PLLC, St. Paul, Minnesota (for appellant G.M.)

J.H., Brooklyn Park, Minnesota (pro se respondent)

John J. Choi, Ramsey County Attorney, Kathryn Eilers, Assistant County Attorney, St. Paul, Minnesota (for Ramsey County Community Human Services Department)

Chad A. Snyder, Snyder Gislason Frasier, LLC, Minneapolis, Minnesota (for child N.H.)

Kathleen A. Junek, Minneapolis, Minnesota (for children B.H., J.H., C.H., A.H.)

Cheryl Toenjes, St. Paul, Minnesota (guardian ad litem)

Considered and decided by Hooten, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

On appeal from the adjudication that her children need protection or services, appellant-mother argues that the district court lacked subject-matter jurisdiction because the children are safe in the care of respondent-father and that the record does not support the district court's findings with respect to the statutory grounds for adjudication. We affirm.

FACTS

Appellant-mother G.M. and respondent-father J.H. have five children: daughter N.H. (born 2001), twin daughters B.H. and J.H. (born 2002), son C.H. (born 2004), and son A.H (born 2006). In July 2015, mother obtained an order for protection against father, at which time mother had sole legal and sole physical custody of the children. Father had visitation every other weekend.

In February 2016, mother reported to the police that her boyfriend choked her, threatened to break her neck, threatened her with a kitchen knife, and stated that he was going to kill her. Mother subsequently admitted to a child-protection worker that she fabricated the incident out of anger at her boyfriend, and that she asked her children to lie to the police about it. She also reported that she did not plan to reunite with her boyfriend.

Child-protection workers interviewed the three oldest children. B.H. and J.H. reported that they felt unsafe with mother's boyfriend. All three said that mother had reunited with her boyfriend. Child-protection workers also interviewed father, who described mother's boyfriend as "a drug addict and alcoholic," and expressed concern

about mother's possible drug use. Father reported that J.H. and B.H. had taken a photo of drug paraphernalia they found in mother's bedroom.

In the summer of 2016, the children visited their paternal grandmother in Iowa. During the visit, father asked his mother to have the children "write their feelings about what's going on at home." The resulting letters express concern about mother's drug use and describe feeling unloved. One states that mother often left them home alone, sometimes without food. When the children returned from Iowa, they moved in with father because mother was homeless.

Father moved the district court in a family court proceeding¹ for sole legal and sole physical custody of the children. After issuing an ex parte order in father's favor on July 28, 2016, the family court conducted a hearing. On August 8, the court granted the parties joint legal and joint physical custody on a temporary basis.² The order designates mother's home as the children's primary residence.

On August 12, respondent Ramsey County Community Human Services Department (the county) filed a child-in-need-of-protection-or-services (CHIPS) petition in district court, alleging the children were CHIPS because (1) they were "without necessary food, clothing, shelter, education, or other required care for the child[ren]'s

¹ In Ramsey County, family-law and child-protection proceedings involving the same family are assigned to a single judge. That is the case here. In this opinion, we use "family court" and "district court" to refer to the separate proceedings.

² The county included a copy of this order in its addendum. Mother moved to strike it on the ground that it was not in the record before the district court. Mother withdrew her motion to strike at oral argument.

physical or mental health or morals because the child[ren]’s parent, guardian, or custodian is unable or unwilling to provide that care”; (2) they were “without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child[ren]’s parent, guardian, or other custodian”; and (3) their “behavior, condition, or environment is such as to be injurious or dangerous to the child[ren] or others.” See Minn. Stat. § 260C.007, subd. 6(3), (8), (9) (2016) (providing the bases for the petition’s allegations). Mother denied the CHIPS allegations. Following an emergency-protective-care hearing, the district court ordered the children placed in father’s home.

In January 2017, the district court conducted a CHIPS trial. The district court heard testimony from both parents, J.H., A.H., N.H., a child-protection worker, and the guardian ad litem. The district court expressly found the testimony of the children more credible than mother’s contradictory testimony. And the district court found clear and convincing evidence that the children need protection or services “by virtue of being without necessary food and parental supervision while in the care of [mother] because she is unwilling to provide that care”; “by virtue of being without proper parental care by virtue of being left alone for a long period of time unsupervised, left without adequate food, and being subjected to an environment of domestic abuse because of the emotional and mental state of their mother”; and “because the home in which they lived with [mother] was dangerous to themselves or others and [mother] is homeless.” Finally, the district court found a CHIPS adjudication was in the children’s best interests. Mother appeals.

DECISION

I. The district court had subject-matter jurisdiction and did not commit legal error by considering the merits of the CHIPS petition.

“Whether subject-matter jurisdiction exists presents a question of law, which we review de novo.” *In re Welfare of Children of D.M.T.-R.*, 802 N.W.2d 759, 762 (Minn. App. 2011). In Minnesota, “[t]he juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services.” Minn. Stat. § 260C.101, subd. 1 (2016).

Mother argues that the district court lacked subject-matter jurisdiction and otherwise committed legal error by considering the CHIPS petition because the children were safe in father’s care at the time of the trial and because of the pending family court proceeding. We address each argument in turn.

First, mother contends that the district court lacked subject-matter jurisdiction because the CHIPS petition contains no allegations involving father and the children were safe in his home. We disagree. “The county need not prove its prima facie case to establish subject matter jurisdiction, but must simply set forth allegations that a child is in need of protection or services to demonstrate that the case is within the class of cases the court has authority to hear.” *In re Welfare of Child of T.T.B.*, 710 N.W.2d 799, 804 (Minn. App. 2006), *rev’d on other grounds*, 724 N.W.2d 300 (Minn. 2006). The CHIPS petition here did just that. Moreover, the statutory grounds on which the CHIPS petition is based reference the children’s needs; a CHIPS petition serves to adjudicate *children*, not their parents. See Minn. Stat. § 260C.007, subd. 6 (2016) (discussing the circumstances in

which a *child* may find himself or herself and therefore be in need of services). Minn. Stat. § 260C.007, subd. 6(3), (8), refer to the child’s singular parent, guardian, or custodian, while subdivision 6(9) refers only to the child’s “behavior, condition, or environment.”

Nor are we persuaded by mother’s citation to *In re Welfare of T.L.L.* as support for the proposition that a district court lacks subject-matter jurisdiction where the children are in the care of a custodial parent who adequately meets their needs. 453 N.W.2d 355, 357 (Minn. App. 1990). In *T.L.L.*, the mother initiated an action to terminate the parental rights of the father, who was serving a prison sentence for murder. *Id.* at 356. The parents reached a settlement that required the county to provide services to the father. *Id.* The county appealed, arguing that the court lacked jurisdiction to enter a dispositional order because T.L.L. did not need protection or services. *Id.* This court agreed, holding that because “[t]he record shows that [the custodial parent] is adequately meeting all of the child’s identified needs[,] . . . no evidence supports the court’s determination that . . . the child is in need of protection or services.” *Id.* at 357. This case presents different circumstances. Mother has legal and physical custody of the children under the family court order. And the CHIPS petition clearly alleges that the children need protection or services based on mother’s conduct.

Second, mother contends that the district court “should not have allowed the CHIPS petition to proceed as a matter of law” because of the pending family court proceeding and the fact that a court “‘may not allow a petition to proceed’ if it appears that the sole purpose is to modify custody between the parents.” See Minn. Stat. § 260C.141, subd. 1(b) (2016). We are not persuaded. Mother cites no legal authority for the assertion that an existing

custody dispute in family court invalidates a CHIPS petition filed by a county human services agency, and provides no factual support for the argument that the petition's sole purpose is to modify custody. The existing family court order provides for joint legal and joint physical custody and designates mother's home as the children's primary residence. Absent district court involvement in the CHIPS context, the numerous conditions implicating the children's welfare alleged in the petition would not be addressed. On this record, we conclude that the district court had subject-matter jurisdiction and properly considered the merits of the petition.

II. Clear and convincing evidence supports a CHIPS adjudication under Minn. Stat. § 260C.007, subd. 6(9).

A district court has broad discretion in child-protection matters. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009). “Findings in a CHIPS proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence.” *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998). A district court's findings are clearly erroneous when “the review of the entire record leaves [this] court with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted). And because “a district court is in a superior position to assess the credibility of witnesses,” we defer to those findings. *S.S.W.*, 767 N.W.2d at 733.

Mother argues that the district court “erred in its findings of fact because the record as a whole does not support substantial evidence that the children were exposed to domestic violence, drugs, or lack of food or parental supervision.” She does not directly challenge the district court's determination that a CHIPS adjudication serves the children's best

interests. Accordingly, we focus our analysis on whether clear and convincing evidence supports any of the alleged statutory grounds.

A child needs protection or services pursuant to Minn. Stat. § 260C.007, subd. 6(9), when the child's "behavior, condition, or environment is such as to be injurious or dangerous to the child or others. An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child's home." To prevail on a CHIPS petition, the county must establish both the statutory ground and the child's resulting need for protection or services. Minn. Stat. §§ 260C.007, subd. 6, .163, subd. 1(a) ("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.") (2016).

J.H. testified that, before mother's current homelessness, the children lived with her in a bad neighborhood. A.H., C.H., J.H., and B.H. told child-protection workers that they did not feel safe when mother left them at home because of the neighborhood, and that they were frequently left without supervision for long periods of time. A.H. mentioned similar concerns in his letter. B.H. and J.H. told a child-protection worker that they did not feel safe with mother's boyfriend. A.H. and J.H. testified that they were often left alone without sufficient food. J.H. said she did not know how to cook, that they usually had bread but it was sometimes moldy, and that they rarely had peanut butter. Mother contradicted the children's testimony, and stated that they never went hungry. But the district court did not find mother's testimony consistent or credible. The district court instead credited the children's testimony. We defer to the district court's credibility determinations. *S.S.W.*, 767 N.W.2d at 733.

The evidence also supports the district court's determination that mother exposed the children to criminal activity when they were in her care. The children's testimony and letters support the district court's finding that mother used drugs while the children were in her care. J.H. testified that she saw her mother dip a metal object into bags and smoke it, "[a]nd it smells disgusting." She noted that this happened in front of her siblings, "mainly in the house" and "[s]ometimes in the car." The letters from J.H. and N.H. both include similar information, with references to a "skunky smell." Mother testified to the contrary, and opined that father must have encouraged the children to lie about her drug use. Again, the district court expressly credited the children's testimony over mother's testimony and we defer to that determination. *See id.*

At trial, the guardian ad litem also described the environment mother provided to the children as dangerous:

Q: As it relates to the environment that [the children] reside in, do you have an opinion as to whether or not while in their mother's care they were in an environment or condition such as to be injurious or dangerous to themselves or others?

A: I believe that their health and safety were at risk.

Q: Why do you say that?

A: My understanding is that the five children that you mentioned were exposed to potentially maternal drug and alcohol use And they had reason to fear for their own and for their mother's safety. And that they experienced basic needs being unmet when they were left unsupervised for periods of time.

In sum, mother's current homelessness, the children's fear when in her care, mother's lack of supervision, and mother's drug use in the children's presence amply support the district court's finding under Minn. Stat. § 260C.007, subd. 6(9). The record also demonstrates

that the children need protection or services while in mother's care. Mother's ongoing housing instability requires assistance from the county. And mother's case plan—which she has not embraced—highlights mother's unmet needs for a chemical-dependency evaluation and treatment and domestic-abuse victim programming.

The district court need only find one proven statutory ground to support a CHIPS adjudication. *S.S.W.*, 767 N.W.2d at 728 (“[W]e conclude that section 260C.007, subdivision 6, requires proof that one of the enumerated child-protection grounds exists and that the subject child needs protection or services as a result.”). Because clear and convincing evidence supports the district court's finding that the children need protection or services under Minn. Stat. § 260C.007, subd. 6(9), we do not reach the other statutory grounds.

Affirmed.