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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0468**

In the Matter of the Welfare of the Child of: K. J. L. and S. A. S., Parents

**Filed August 28, 2017
Affirmed in part, reversed in part, and remanded; motion granted
Smith, John, Judge***

Anoka County District Court
File No. 02-JV-16-1429

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K.J.L., Greenbush, Minnesota (pro se respondent mother)

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

M.S., Greenbush, Minnesota (pro se respondent custodian)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Smith, John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We reverse the dismissal of appellant's child-in-need-of-protection-or-services (CHIPS) petition because the petition alleges facts that establish a prima facie case of medical neglect. We remand for further proceedings consistent with this opinion.

FACTS

Appellant Carol J. Smith filed a CHIPS petition in Anoka County, MN, alleging that A.J.L., her great-granddaughter, was medically neglected and without proper parental care and that she had needs that were not being met by her parents. The petition related the following facts:

[Appellant] is the child's great-grandmother. [Appellant] is also a licensed PCA (personal care attendant). [Appellant] is a homeowner and resident of Anoka County, MN. [Appellant] has cared for . . . A.L.J. for most of her life. However, A.L.J.'s parents would occasionally take possession of [her] for a couple of weeks at a time. On June 27, 2016, [appellant] picked up [A.L.J., then two] from [her mother, K.L.J.]. [Appellant] met [K.L.J.] at a gas station in Brooks, [Red Lake County], MN. . . . When [appellant] took possession of A.L.J. she was blistered, bruised, and had a terrible rash all over her face, hands, and vaginal and anal area. Her fingers were fused together from the severe blisters. The rash on her vaginal area was so severe that A.L.J. could not even sit. The blisters on her fingers were so severe that they were fused together – she couldn't even hold a sippy-cup. All she could do was lie on her back and writhe in pain.

[Appellant] took A.L.J. to [a] medical center in Thief River Falls, [Pennington County], MN, where medical staff drew her blood, tested her, and provided [appellant] with medication for A.L.J., and told [her] to return in two days. On June 30, 2016, [appellant] returned with A.L.J. to [the] medical center. [According to two doctors, A.L.J.] was suffering from hand and foot disease, impetigo, a yeast infection, and herpes.

They informed [appellant] that they had contacted Mahnomen County Social Services. In fact, they were already with A.L.J. taking photographs for an investigation. . . . [Appellant] was then interviewed by Mahnomen county Social Services.

A.L.J. was placed in [appellant's] care and [appellant] was told by Mahnomen County Social Services to call the police if [K.L.J.] attempted to take possession of A.L.J.

[Appellant] then returned to [her] home in Ramsey, Anoka County, MN, and nursed A.L.J. back to health.

On or about August 8, 2016, [appellant] was in contact with both [K.L.J.] and Mahnomen County Social Services. . . . [K.L.J.] . . . called [appellant] and asked [her] to take care of [A.L.J.]. . . .

On or about August 20, 2016, the investigation by Mahnomen County Social Services was closed for two reasons: (1) they could not locate [K.L.J.]; and (2) [A.L.J.] was safe and secure while cared for by [appellant].

On or about August 24, 2016, [appellant] received a call from [K.L.J.], who told [appellant] she was homeless and . . . in Thief River Falls, MN. [Appellant] told [K.L.J.] that [appellant] would help [K.L.J.] find safety . . . if [K.L.J.] could get to Ramsey, MN. At about 5:00 a.m. the next morning, [K.L.J.] showed up [at appellant's home]. . . . She spent no time with . . . [A.L.J.]. Two days later, she left for Mahnomen.

On September 24, 2016, [appellant] received a phone call from the Ramsey Police [Department]. [She] was informed that [K.L.J.] and her step-father were at the Police Station, and that they wanted custody of A.L.J. Because [K.L.J.] had no proof that she was the mother of [A.L.J.], the police sent her away.

Fearing for the safety and well-being of [A.L.J., appellant] went to the Anoka County Self Help Desk and spoke to a clerk. [Appellant] was told [she] should file an Order for Protection on behalf of A.L.J. [She] did as [she] was instructed[;] she filed an Order for Protection in Anoka County District Court. A hearing was set for October 12, 2016. At that hearing, the judge . . . dismissed the matter, [concluding] that [appellant's] affidavit did not allege[] domestic abuse

Immediately after court, [appellant] contacted the Ramsey Police Department and expressed [her] concern regarding [K.L.J.] attempting to take possession of [A.L.J.]. [Appellant] met with an investigator, showed him the pictures of one of A.L.J.'s rashes, and explained what had transpired

since June 27, 2016 regarding A.L.J. They immediately took A.L.J. and placed her in foster care.

On October 13, 2016, [appellant] went to Anoka County Social Services and attempted to meet with the case worker in order to show her pictures of the severe medical neglect. [They] also met with representatives from the Anoka County Attorney's Office in order to express [their] concern. Appellant's concerns seemed to fall on deaf ears, as A.L.J. was returned to [K.L.J.] that afternoon.

[Appellant] is in real fear that [A.L.J.] will be severely neglected and placed in an unsafe condition once again.

The district court reviewed the petition and determined that the petition established a prima facie case that A.L.J. was CHIPS. The district court set the matter for an admit or deny hearing. Anoka County filed a motion to intervene as a party and moved to dismiss the CHIPS petition, arguing that the district court did not have jurisdiction and that the petition failed to state facts which, if proven, would establish a prima facie CHIPS case.

The district court granted Anoka County's motion to intervene, denied the motion to dismiss the petition for lack of jurisdiction, and granted the motion to dismiss for failing to allege facts to support a prima facie case that A.L.J. was CHIPS.

D E C I S I O N

This court reviews questions of law, "such as the interpretation of the statutory criteria for adjudicating a CHIPS petition," de novo. *In re Welfare of the Children of N.F.*, 735, 737 (Minn. App. 2007) *aff'd in part, rev'd in part*, 749 N.W.2d 802 (Minn. 2008).

Appellant's petition stated that A.J.L. had been in need of medical care when appellant took charge of her five months earlier, that she had been in K.J.L.'s care prior to that time, that she was diagnosed with hand and foot disease, impetigo, a yeast infection, and herpes; that appellant had procured medical care for her; and that appellant had then

“nursed her back to health.” The petition did not allege that A.J.L. was not in good health and receiving appropriate care at the time of filing; rather, the petition was filed “in real fear that [appellant’s] great grand-daughter [A.J.L.] will be severely neglected, and placed in an unsafe condition once again.”

The district court found that

[i]t is clear that [K.J.L.] did not provide [A.J. L.] with medical care during the approximately one (1) week described in the petition (June 27 through July 5, 2016)[;] however, it appears that this was an isolated incident, and this Court cannot assume that a parent [here, K.J.L.] is “unwilling or unable” to provide care based on a great grandparent’s [here, appellant’s] willingness to provide assistance.

See Minn. Stat. § 260C.007, subd. 6(3) (2016) (providing that one basis for declaring a child to be CHIPS is that the parent is “unable or unwilling” to provide food, clothing, shelter, education, or other required care for physical or mental health).

But A.J.L. was in K.J.L.’s care immediately prior to her diagnosis, when the various severe skin diseases appeared and spread, and the record does not indicate that K.J.L. provided any medical treatment for her during that time. Thus, A.J.L. was indisputably without required care for her physical health in June 2016, *see id.*, and was returned to K.J.L.’s care in October 2016.

The district court also concluded that “the Petition does not establish a *prima facie* case based on the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.” See Minn. Stat. § 260C.007, subd. 6(5) (2016) (providing that one basis for declaring a child to be CHIPS is that the child “is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from

a disabled infant with a life-threatening condition”). We disagree. Appellant did not need to show that A.J.L. was “a disabled infant with a life-threatening condition” from whom medically indicated treatment had been withheld to show that she was medically neglected and met this criterion; the district court disregarded the “but is not limited to” phrase in concluding that no prima facie case had been established. Moreover, at a hearing medical evidence could be provided as to the extent or severity of A.J.L.’s condition when she was diagnosed, the possible causes of that condition, or the inability of K.J.L. to provide appropriate care.

We conclude that the CHIPS petition established a prima facie case of medical neglect by K.J.L. and reverse and remand for further proceedings in accordance with this opinion.

We agree with the district court’s determination that Anoka is not the proper venue. On remand, the district court shall make an order determining the proper venue for future proceedings in this matter. (The district court did not make an order on the issue of venue because it did not feel it needed to in light of the dismissal.) The motion by respondent Anoka County Human Services to strike the extra-record document from appellant’s addendum is granted.

Affirmed in part, reversed in part, and remanded; motion granted.