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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0918**

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

**Filed November 6, 2017
Affirmed
Reilly, Judge**

Olmsted County District Court
File No. 55-JV-17-929

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

U N P U B L I S H E D O P I N I O N

REILLY, Judge

Appellant-mother M.J.H. challenges the district court's order terminating her parental rights to her child, C.M.M. Because a statutory ground for termination exists and termination is in the child's best interests, we affirm.

FACTS

Mother challenges the district court's order terminating parental rights to her child, C.M.M., who was born in March 2009. C.M.M. has suffered from serious medical conditions since birth, including a collapsed lung, hip dysplasia, and Stage 3 kidney disease. C.M.M. was hospitalized for the first six months of his life. C.M.M. follows a strict diet to support proper kidney functioning and requires numerous medications, some of which must be administered at particular times. C.M.M.'s medical needs increased when he was three and four years old, and he required vesicostomy surgery and growth hormone injections. Since C.M.M.'s birth, mother has received parenting assistance from C.M.M.'s foster parents, who provided care for him on a weekly basis.¹

Mother has a history of drug and alcohol abuse. Mother started using marijuana as a teenager, and continued to use it during her pregnancy with C.M.M. Mother's alcohol use escalated when C.M.M. was three years old. Mother began drinking heavily each weekend, leaving C.M.M. in the care of his foster parents for as long as three to four nights at a time. At that time, C.M.M.'s foster parents were not properly educated on how to give C.M.M. his various medications and growth hormone injections, and C.M.M.'s medical needs went unmet. During this time period, mother was convicted of two impaired-driving offenses and began abusing drugs, including OxyContin, methamphetamine, and heroin.

In February 2015, Olmsted County Community Services (OCCS) received a report that mother left C.M.M. in the care of her sister, B.H., while B.H. was high on

¹ The foster parents are C.M.M.'s paternal aunt and uncle.

methamphetamine. Although mother immediately picked C.M.M. up from her sister's home when she became aware of her sister's drug use, the situation was reported to OCCS because mother had left C.M.M. in the care of an unsafe provider. OCCS opened a family assessment, which was later closed in June 2015 when OCCS determined that further services were no longer needed.

At the end of February 2016, OCCS received an anonymous report that mother was using heroin in C.M.M.'s presence, and that there were drugs and razor blades "lying around" mother's apartment. A few days later, OCCS received a second report that mother was using drugs and C.M.M. had been unable to wake her and thought she was dead. Mother acknowledged that she was addicted to OxyContin pills, which she kept in her purse within C.M.M.'s reach. OCCS was concerned about mother's drug use, her inability to get C.M.M. to school,² and her habit of routinely dropping C.M.M. off with his foster parents without notice and without his medications.

OCCS opened a family assessment case and assigned an assessment worker. Mother provided three positive urinalysis tests during the assessment period, testing positive for methamphetamine, heroin, and marijuana. Mother later admitted to using Vicodin. OCCS was concerned about mother's drug use, C.M.M.'s unmet medical and educational needs, mother's overall decision-making abilities, and reports that mother

² C.M.M. has an individualized education plan at his elementary school and receives additional help. As of the date of the termination trial, C.M.M. was behind in second grade due to his many absences while in his mother's care. The district court's termination order also found that mother had not been in contact with any of C.M.M.'s teachers and had not attended any parent-teacher conferences.

allowed unsafe people into the home with C.M.M. OCCS developed a case plan outlining its concerns and expectations for mother. The case plan included a requirement that mother have no unsupervised care of the child. C.M.M. was placed in the care of his foster parents on March 2, 2016, in accordance with OCCS's case plan, and mother signed a Delegation of Parental Authority on the same date.

In April 2016, OCCS opened ongoing case management services for the family. Mother signed the case plan and agreed with the goals articulated in the plan, but missed meetings with the social worker and refused to submit to urinalysis examinations. OCCS's social worker formulated a second out-of-home case plan in June because mother had not made progress on the goals of the initial case plan regarding her chemical use. The case plan required mother to remain sober from all mood-altering chemicals, including methamphetamine, heroin, and alcohol, and to provide OCCS with urine samples upon request. Mother completed a Rule 25 assessment in March 2016, which recommended inpatient treatment. Mother refused to attend inpatient treatment. The social worker testified that from "March of 2016 to March of 2017 there was never a point that I was confident that [mother] was sober."

On September 14, 2016, mother signed a Voluntary Placement Agreement with OCCS, allowing C.M.M. to be placed in foster care. Five days later, OCCS filed a child-in-need-of-protection-or-services petition due to concerns about (1) mother's history of substance abuse; (2) the parents' history of domestic violence; and (3) C.M.M.'s health needs and mother's inability to meet those needs. At the settlement conference in November 2016, mother signed a settlement agreement admitting that C.M.M. was a child

in need of protection. The district court adjudicated C.M.M. to be a child in need of protection or services and found that social services had made reasonable efforts to prevent removal of the child and reunification was not possible.

On February 9, 2017, OCCS filed a Termination of Parental Rights Petition under Minnesota Statutes section 260C.301, subdivisions (1)(b)(4) and (5) (2016), with respect to mother. The district court held a trial in April 2017 and filed an order on May 22, 2017, ruling that the statutory grounds for termination had been proved and that clear and convincing evidence existed to terminate mother's parental rights under section 260C.301, subdivision 1(b)(4), for palpable unfitness; and subdivision 1(b)(5), for failing to correct the conditions leading to the child's placement out of the home.³ The district court also ruled that terminating mother's parental rights was in C.M.M.'s best interests.

Mother appeals.

D E C I S I O N

I. Standard of Review

The decision to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014). While a reviewing court conducts a close inquiry into the evidence, it also gives "considerable deference" to the district court's termination decision. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We will affirm the termination of parental rights if "at least one statutory ground for termination is supported by clear and convincing evidence and

³ The district court also terminated C.M.M.'s father's parental rights. Father has not appealed this determination.

termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004). A district court's determination of whether a statutory ground for terminating parental rights is present is reviewed for an abuse of discretion, while the district court's underlying findings of fact are reviewed for clear error. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). The "best interests of the child" are the "paramount consideration" in a termination proceeding. Minn. Stat. § 260C.301, subd. 7 (2016). A decision that termination is in the child's best interests is reviewed for abuse of discretion. *J.R.B.*, 805 N.W.2d at 901-02.

II. Evidentiary Issues

Mother challenges several of the district court's factual findings as "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole," including that: (a) mother was still in contact with C.M.M.'s biological father; (b) mother was not taking responsibility for her addiction; (c) mother told C.M.M. that his father was incarcerated; (d) mother could not manage C.M.M.'s medical needs; (e) mother dropped C.M.M. off at his foster parents for up to three nights at a time without medications; (f) mother had mental health issues; and (g) mother was not a safe and stable caregiver for C.M.M.

A district court's evidentiary rulings generally will not be reversed absent a clear abuse of discretion, and appellant bears the burden of establishing that the district court abused its discretion and that appellant was prejudiced as a result. *In re Welfare of D.D.R.*, 713 N.W.2d 891, 904 (Minn. App. 2006). With certain exceptions, "in a juvenile protection matter the court shall only admit evidence that would be admissible in a civil

trial pursuant to the Minnesota Rules of Evidence.” Minn. R. Juv. Prot. P. 3.02, subd. 1. Neither party argues the applicability of any exception in this case. *See* Minn. R. Juv. Prot. P. 3.02, subds. 2, 3 (listing exceptions); *see also* Minn. Stat. § 260C.165 (2016) (same).

Mother argues that the district court’s factual findings were based on hearsay evidence. “‘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). Mother raised only one hearsay objection at trial, and this court generally “will not consider a challenge to the admission of evidence unless . . . a timely objection or motion to strike appears of record.” Minn. R. Evid. 103(a)(1). Even if we consider these arguments, we determine that the district court did not abuse its discretion.

At trial, mother’s single hearsay objection occurred during a portion of the social worker’s testimony related to drug use at mother’s apartment. The district court overruled the objection. “The decision whether to admit or exclude evidence is discretionary with the district court.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012). At the time of her testimony, the social worker was reviewing a police report, kept as part of normal police records, to refresh her recollection as to the correct order of events. The contents of the police report fall within the public records exception to the hearsay rule. *See* Minn. R. Evid. 803(8) (stating that records and reports in any form compiled by a public official concerning matters observed pursuant to duty imposed by law as to which matters there was a duty to report, are not excluded by the hearsay rule). The district court did not abuse its discretion when it overruled this objection.

a. Mother's contact with C.M.M.'s biological father

Mother claims that she had not been in contact with C.M.M.'s father. The district court did not credit mother's claim, and found that mother "still has contact with [father] which is worrisome to this Court." Mother testified that she had only limited contact with father. Father contradicted her statements and "informed the Court that they have contacted each other by text messaging and jail phone calls." The district court credited father's testimony above mother's testimony, and we decline to substitute our own credibility determinations or independently weigh the evidence on appeal. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990).

b. Mother's acceptance of responsibility for addiction

Mother challenges the social worker's testimony relating conversations with a chemical dependency provider about mother's inability or unwillingness to take responsibility for her actions, and the effect of mother's addiction on C.M.M. and others. On appeal, mother characterizes this testimony as "blatant hearsay," and argues that the testimony is unsupported by the evidence. Mother failed to raise this hearsay objection at trial, depriving OCCS of the opportunity to either call the treatment provider to testify at trial or to establish that the statements were admissible under a hearsay exception. *See In re Welfare of M.S.M.*, 387 N.W.2d 194, 199 (Minn. 1986) (precluding a party from raising an issue for first time on appeal). Furthermore, the social worker's testimony was adequately supported by the evidence in the record. We recognize that the district court has a "unique ability to evaluate witness credibility and weigh conflicting evidence," *In re*

Welfare of M.A.H., 839 N.W.2d 730, 746 (Minn. App. 2013), and we discern no abuse of discretion here.

c. Mother's statements that father was incarcerated

The district court found that following a visit to his mother in inpatient treatment, “[C.M.M.] made a comment regarding how [father] was in jail. [C.M.M.] had no way of knowing this information unless [mother] told him.” Mother claims that she did not tell C.M.M. that his father was in jail, and asserts that someone else could have told him of his father's incarceration. We decline to substitute our own credibility determinations for those of the district court. *See M.D.O.*, 462 N.W.2d at 374-75. Moreover, this finding is but a very small part of the case against mother.

d. Mother's ability to manage C.M.M.'s medical needs

Mother objects to the district court's findings that she was unable to manage C.M.M.'s medical needs and dropped him off at his foster parents for extended periods of time. But ample evidence in the record supports these findings. The district court found it “apparent” that mother “does not fully understand” C.M.M.'s medical needs, and noted that she was “unable to explain all of [his] medications and what the medications were treating,” had not been “diligent in providing [C.M.M.] proper medical care,” frequently dropped C.M.M. off with his foster parents for up to three nights at a time without his growth hormone shot, and failed to get C.M.M. to all of his medical appointments. Adequate support in the record supports the district court's factual findings, and we will not reweigh the evidence now.

e. Mother's habit of leaving C.M.M. with foster parents

Mother challenges testimony from the guardian ad litem regarding the foster parents' statements that mother repeatedly left C.M.M. in their care for several days at a time. Minnesota statute provides that: "Before making a disposition in a case, terminating parental rights . . . the court may consider any report or recommendation made by the . . . guardian ad litem . . . or any other information deemed material by the court." Minn. Stat. § 260C.193, subd. 2 (2016). The district court did not abuse its discretion by considering testimony from the guardian ad litem before making its ruling.

f. Mother's mental health issues

Mother disputes the district court's factual finding that she has mental health issues. Mother's social worker believed that mother "struggled with depression and anxiety." The district court found the social worker's testimony "credible," and we decline to reconsider those credibility determinations now.

g. Mother's ability to give safe and stable care to C.M.M.

Mother challenges the district court's findings that she would be unable to become a safe and stable caregiver. As stated, we recognize the district court's "unique ability to evaluate witness credibility and weigh conflicting evidence," *M.A.H.*, 839 N.W.2d 730 at 746, and we view the record in the light most favorable to the district court's factual findings, *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996). We also note that it is critical for counsel to raise hearsay objections at trial. Otherwise, "the state [is] not given the opportunity to establish that some or all of the statements were admissible under one of the numerous exceptions to the hearsay rule." *Id.* We determine that, on this

record, the district court's factual findings were not manifestly contrary to the weight of the evidence or unsupported by the evidence as a whole. *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 410 (Minn. App. 2011).

For the reasons stated above, we discern no abuse of discretion in the district court's evidentiary rulings and admission of testimony. Moreover, mother has not demonstrated that the alleged errors were prejudicial. "A new trial may be granted on the basis of an improper evidentiary ruling only if the appellant demonstrates prejudicial error." *J.K.T.*, 814 N.W.2d at 93. A district court's evidentiary ruling "is not prejudicial if the record contains other evidence that is sufficient to support the findings." *Id.* (citing *In re Welfare of S.R.A.*, 527 N.W.2d 835, 838 (Minn. App. 1995) (concluding that any error in admission of challenged evidence was harmless because it was cumulative to other evidence, and was therefore not prejudicial), *review denied* (Minn. Mar. 29, 1995)). Here, ample evidence in the record sufficiently supports the district court's findings that mother had drug- and alcohol-abuse issues, had difficulty maintaining sobriety, frequently left C.M.M. in the care of his foster parents when she was drinking, failed to maintain a safe and sober network, and had difficulty meeting C.M.M.'s basic needs. Accordingly, we determine that even if the admission of the contested evidence was in error, any such error was harmless because the challenged evidence was cumulative to other evidence and not prejudicial.

III. A Statutory Ground for Termination Exists

A district court may involuntarily terminate parental rights if one or more of nine conditions exist. Minn. Stat. § 260C.301, subd. 1(b) (2016). Here, the district court found that "reasonable efforts, under the direction of the court, have failed to correct the

conditions leading to the child's placement" out of the home. Minn. Stat. § 260C.301, subd. 1(b)(5). We closely examine the record to determine whether there was sufficient clear and convincing evidence supporting termination. *S.E.P.*, 744 N.W.2d at 385.

Mother presented evidence that she successfully completed inpatient treatment, had remained sober since entering an alcohol treatment program, and attended chemical-dependency support groups, in accordance with her case plan. Mother argues that there is no evidence suggesting that her drug use will continue into the future. We agree that the focus in termination proceedings should be on circumstances as they exist at the time of the hearing and the expected duration of those circumstances, rather than on the parent's prior history. See *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) ("When considering termination of parental rights, the court relies not primarily on past history, but to a great extent upon the projected permanency of the parent's inability to care for his or her child.") (quotations omitted). However, a parent cannot avoid termination by showing only "minimal cooperation" before the termination hearing. See *In re Welfare of D.C.*, 415 N.W.2d 915, 918 (Minn. App. 1987).

Even when a parent complies with aspects of a case plan, that does not "necessarily equate[] with a correction of the conditions that led to the out-of-home placement." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 667 (Minn. App. 2012). Instead, "[t]he critical issue is not whether the parent . . . complied with the case plan, but rather whether the parent is presently able to assume the responsibilities of caring for the child." *J.K.T.*, 814 N.W.2d at 89. Here, the district court noted that OCCS continued to have "concerns

about [mother's] parenting abilities, her history of drug use, and her ability to maintain sobriety.”

The chronology of this case is important and highlights the minimum effort mother expended in correcting the conditions leading to C.M.M.'s out-of-home placement. Mother has an extensive history of drug and alcohol abuse, beginning when she was a teenager and continuing through her pregnancy and C.M.M.'s childhood. Mother's alcohol use escalated when C.M.M. was a toddler, and she began leaving him with his foster parents for extended periods of time. OCCS received a report in February 2015 that mother left C.M.M. in the care of her sister, who was high on methamphetamine. In February 2016, OCCS received two reports that mother was using heroin in C.M.M.'s presence. One month later, in March 2016, mother signed a Delegation of Parental Authority. Mother later signed a Voluntary Placement Agreement with OCCS, allowing C.M.M. to be placed in foster care. OCCS filed a termination petition in February 2017.

Due to OCCS's concerns about mother's continued drug use, mother completed a Rule 25 assessment in March 2016. The social worker urged mother to attend inpatient chemical dependency treatment, and offered several resources for mother to contact. However, mother refused to attend inpatient treatment and chose instead to continue outpatient methadone treatment. Mother agreed to attend inpatient treatment only after OCCS filed the termination petition. While mother has remained sober, she continues to use methadone and only “infrequently” attends support groups. And although mother stated that she was going to lower her methadone dose after leaving treatment, she has yet to do so. The social worker testified that she did not believe methadone treatment was in

mother's best interests, and worried that it would not help mother's sobriety. The social worker testified that mother continued to use methadone up to the date of the termination trial and becomes "very drowsy or almost kind of out of it" when her dose is changed, which "continues to worry" OCCS.

Moreover, the social worker testified that mother was not "tak[ing] any accountability for her [drug] use," and had not established a "safe and sober network." Mother had a "long history of associating with individuals who use chemicals," and one of the goals of her case plan was to disassociate herself from "negative influences," including C.M.M.'s father and mother's ex-boyfriend, with whom mother "had some drug use history" and a history of violence. The district court found that mother continues to associate with these individuals, illustrating her "inability to not only eliminate negative influences, but also to choose individuals [who] are safe and supportive."

The primary conditions referenced by the district court relate to mother's chemical use, the history of domestic violence in the home, and her neglect of C.M.M.'s basic needs. Despite OCCS's efforts to ensure that mother had the necessary resources to become sober, maintain her sobriety, and build a support system, mother failed to "correct the conditions leading to the child's placement out of the home." The district court further found that the "provision of further services for the purpose of rehabilitation and reunification is futile" and "unreasonable under the circumstances." Clear and convincing evidence in the record supports the district court's findings that mother failed to correct the conditions leading to C.M.M.'s out-of-home placement.

Because we affirm that one statutory basis for terminating parental rights exists, we need not address the other basis identified by the district court to terminate parental rights. *See R.W.*, 678 N.W.2d at 55 (“Termination of parental rights will be affirmed as long as at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the child’s best interests.”). We therefore do not address the district court’s palpable-unfitness finding.

IV. Best Interests of the Child

We will affirm a termination decision if “at least one statutory ground alleged in the petition is supported by clear and convincing evidence and termination of parental rights is in the child’s best interests.” *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008) (citations and quotations omitted). The child’s best interests are the paramount consideration in a termination proceeding. Minn. Stat. §§ 260C.001, subd. 2(a), .301, subd. 7 (2016). A best-interests analysis requires consideration of the child’s interests in preserving the parent-child relationship, the parent’s interests in preserving that relationship, and any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *see also J.R.B.*, 805 N.W.2d at 905 (“Competing interests [of the child] include such things as a stable environment, health considerations[,] and the child’s preferences.” (quotation omitted)).

The district court’s best-interests finding is well-supported. With respect to the child’s interests in preserving the parent-child relationship, the district court found that C.M.M. has been in the permanent care of his foster parents since March 2016.

As to mother's interests in preserving the relationship, The district court found that while mother loves C.M.M., she does "not fully understand his medical needs," feeds him high-sodium foods that are detrimental to his special diet, frequently leaves him with his foster parents for several days at a time without proper medication, fails to get him to school for up to three days each week, and allows "negative and unsafe people" to visit and stay in her home. The district court found that while it has "no doubt that [mother] loves [C.M.M.], she cannot provide the safety and support he needs to meet his medical needs." These findings are amply supported by the record, given mother's well-documented history of chemical abuse, domestic violence, and neglect. *See In re Welfare of R.M.M.*, 316 N.W.2d 538, 542 (Minn. 1982) (affirming termination where parent's inability to care for child "threatens the mental and physical health" of child); *see also In re Welfare of A.J.C.*, 556 N.W.2d 616, 622 (Minn. App. 1996) (affirming termination of parental rights where "in spite of [mother's] love for her children, [she] has failed to comply with her parental duties, basically due to her personal problems of alcoholism, drug addiction, low self-esteem, and her tendency to involve herself in abusive relationships").

With regard to any competing interests, the district court found that terminating mother's parental rights will allow C.M.M. to remain in the care of his foster parents. C.M.M. is "very loved and well supported in his current environment." His foster parents are "fully educated on [his] medical needs, including his lengthy list of medications, his strict dietary needs, his tube feeding, and how to properly administer his growth hormone shot," get him to all of his medical appointments, and satisfy his needs for a safe, stable, and permanent home. Because a statutory ground for termination is supported by clear and

convincing evidence and termination is in C.M.M.'s best interests, we affirm the termination of mother's parental rights to C.M.M.

V. Mother's ICWA Argument is Untimely and Unsupported

For the first time on appeal, mother argues that the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (2016) (ICWA), may apply. "There are two prerequisites to invoking the requirements of the ICWA." *J.A.V. v. Velasco*, 536 N.W.2d 896, 900 (Minn. App. 1995), *aff'd sub nom. Matter of Paternity of J.A.V.*, 547 N.W.2d 374 (Minn. 1996) (citation omitted). "First, it must be determined that the proceeding is a 'child custody proceeding' as defined by the Act." *Id.* It is undisputed that this case is a child custody proceeding. "Once it has been determined that the proceeding is a child custody proceeding, it must then be determined whether the child is an Indian child." *Id.*; *see also* 25 U.S.C. § 1903(4) (defining "Indian child" under federal law); Minn. Stat. § 260.755, subd. 8 (2016) (defining "Indian child" under Minnesota law).

In October 2016, the district court issued an order in which it determined that "the Indian Child Welfare Act [ICWA] does not apply to the child." Mother did not contest this determination. The termination petition restated that C.M.M. "has not been determined to be of American Indian descent." At no time during the pendency of the case in district court did mother allege that C.M.M. might be an Indian child or that ICWA applied.

Instead, mother attached to her appellate brief an affidavit from her father, in which he averred that he was "of descent from the Chippewa Tribe out of Belcourt, North Dakota," and that C.M.M.'s maternal grandmother was a member of the Blackfoot Tribe. The affidavits are dated August 7, 2017. Mother did not file a motion to correct or modify

the appellate record. See Minn. R. Civ. App. P. 110.05 (permitting court to supplement record if something “material to either party is omitted from the record by error or accident”). Notably, mother did not submit an affidavit claiming that either she or C.M.M. may be eligible for membership in an Indian tribe. See 25 U.S.C. § 1903(4). Two days later, on August 9, an OCCS social worker submitted a review affidavit with the district court stating that “[t]he child has not been determined to be of Native American descent.”

The record on appeal is limited to the record available to the district court at the time it made its decision. See Minn. R. Civ. App. P. 110.01 (“The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.”). “An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.” *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). “[A] district court has an affirmative obligation to inquire into whether ICWA applies to a custody determination when it has reason to believe that the child subject to the determination is an Indian child as defined by the act.” *In re M.R.P.-C.*, 794 N.W.2d 373, 379 (Minn. App. 2011). Here, the district court had no “reason to believe” that C.M.M. was an Indian child and found that ICWA did not apply—findings that mother did not contest during the pendency of this case in district court. *Id.* Because mother raised this claim for the first time on appeal, we decline to consider it now.

Affirmed.