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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1543**

In the Matter of the Welfare of the Children of:
L. M. P. and L. R. D., Parents

**Filed March 7, 2018
Affirmed
Hooten, Judge**

Scott County District Court
File No. 70-JV-17-3287

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Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant mother challenges the district court's order terminating her parental rights, arguing that the district court erred by permitting her attorney to stipulate to a document at trial without assuring that she understood the stipulation. She also contends

that the district court made clearly erroneous factual findings in justifying the termination. We affirm.

FACTS

Appellant L.M.P. and L.R.D. are the parents of two young children. In January 2016, Scott County Health and Human Services Agency (the agency) filed a child in need of protection or services (CHIPS) petition, raising safety concerns regarding their oldest child, now three years-old, due to both parents' alleged drug use. The district court dismissed this first petition in February 2016 because the agency no longer had safety concerns regarding the child. The agency later received a report in April 2016 that L.M.P. was using drugs while pregnant. L.M.P. gave birth to her second child, L.M.D., in late July 2016.

On August 8, 2016, the agency received a report regarding L.M.D.'s lack of adequate weight gain after her discharge from the hospital. L.M.D. was readmitted to the hospital and diagnosed with failure to thrive. Once admitted, L.M.D. began to steadily gain weight.

The agency filed a new CHIPS petition, and the district court adjudicated both children as CHIPS in October 2016. The district court instituted a case plan for both L.M.P. and L.R.D., but they refused to sign the case plan, believing that the services were unnecessary. The agency filed a permanency petition to terminate the parental rights of L.M.P. and L.R.D. in February 2017.

In August 2017, the district court held a trial at which it heard testimony from several individuals, including L.M.P. At the beginning of trial, Scott County (the county)

offered 46 exhibits to the district court as stipulated to by the parties. The district court admitted these exhibits into evidence without objection. During the middle of trial, the parties stipulated to an additional 41 exhibits. The district court then inquired into a “Stipulated Facts” document, a document that laid out 49 bullet-point facts agreed to by the parties. L.M.P.’s counsel informed the district court that he had the opportunity to review the “Stipulated Facts” document with L.M.P. Neither L.M.P. nor L.R.D. objected to its admission. The district court received and admitted the “Stipulated Facts” document as well as the additional exhibits.

The district court filed an order terminating the parental rights of L.M.P. and L.R.D. in September 2017. As part of its findings, the district court incorporated the “Stipulated Facts” agreed to by the parties. The district court also discussed L.M.D.’s difficulty in gaining weight immediately after her birth, and it explicitly found that, “No medical condition was identified that would have prevented [L.M.D.] from gaining weight. The medical providers identified the issue as possible child neglect.” The district court terminated L.M.P.’s rights on the statutory grounds of Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), and (8) (2016).

L.M.P. now appeals.

D E C I S I O N

I.

L.M.P. argues that the district court erred by admitting a document labeled “Stipulated Facts” without first inquiring whether she was aware of the document or understood its possible implications. She also asserts that her testimony rebuts and

contradicts some of the stipulated facts in the document. Evidentiary rulings are within the district court's discretion, and we will not reverse a ruling unless there is an abuse of that discretion and a showing of prejudice. *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 172 (Minn. App. 2005); *see also Pekarek v. Wilking*, 380 N.W.2d 161, 163 (Minn. App. 1986) (reviewing district court determination regarding parties' stipulation for abuse of discretion).

As a preliminary matter, the county claims that L.M.P. is barred from raising this issue on appeal because she did not object to the district court's receipt of the "Stipulated Facts" document at trial and did not file a post-trial motion. Despite the gravity of termination proceedings, an argument may be waived when raised for the first time on appeal. *In re Welfare of D.D.G.*, 558 N.W.2d 481, 485 (Minn. 1997); *see also In re Welfare of Children of Coats*, 633 N.W.2d 505, 512 (Minn. 2001) (applying waiver analysis to termination proceeding). Because L.M.P. did not object to the admission of the exhibits or the "Stipulated Facts" document and did not raise the issue in a post-trial motion, we conclude that she waived this claim. *See D.D.G.*, 558 N.W.2d at 485.

Even if L.M.P. did not waive this claim, her argument is unpersuasive. Minnesota courts have typically endorsed the use of stipulations in other family-related proceedings because they simplify and expedite litigation. *See In re Welfare of D.L.M.*, No. A09-1042, 2009 WL 3818391, at *4 (Minn. App. Nov. 17, 2009) (citing *Shirk v. Shirk*, 561 N.W.2d

519, 521 (Minn. 1997)).¹ Stipulations are “accorded the sanctity of binding contracts.” *Shirk*, 561 N.W.2d at 521.

During the middle of trial, the district court inquired about the “Stipulated Facts” document. L.M.P.’s counsel explained to the district court that he had reviewed the document with L.M.P. and counsel expressed agreement with its contents. L.R.D.’s counsel indicated that she did not review it with her client but believed that the stipulated facts would be admitted through testimony or other evidence. With no objection from either L.M.P. or L.R.D., the district court admitted the “Stipulated Facts” document.

L.M.P. fails to refer to any relevant authority which demonstrates that the district court’s acceptance of this document constituted an abuse of discretion under these circumstances. She attempts to compare her case to situations in which a parent voluntarily terminates her parental rights and therefore suggests that the district court should have placed her under oath to ensure her understanding of the relevant facts and confirm her consent to the stipulation. *See* Minn. R. Juv. Prot. P. 42.08, subd. 2. A district court may terminate a parent’s rights to a child through written consent of the parent. Minn. Stat. § 260C.301, subd. 1 (2016). But a parent’s mere admission to some of the allegations in a termination petition does not necessarily convert the proceeding into a voluntary termination. *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 712 (Minn. App. 2004). This case clearly involved a contested, involuntary termination proceeding; L.M.P. entered a denial of the termination petition before trial and argued that the district court should

¹ We acknowledge that our unpublished opinions, though they may have persuasive value, ultimately lack precedential authority. *See* Minn. Stat. § 480A.08, subd. 3 (2016).

deny the petition after trial. Accordingly, L.M.P.’s stipulation to certain facts in the record does not automatically convert this into a voluntary proceeding requiring the procedures set forth in rule 42.08.

L.M.P. argues that her testimony rebutted some of the stipulated facts. We give “considerable deference” to the district court’s decision in terminating parental rights “because a district court is in a superior position to assess the credibility of witnesses.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The parties’ stipulation to over 80 exhibits corroborates the “Stipulated Facts” used in the district court’s factual findings. *See J.B.*, 698 N.W.2d at 172 (“[E]rroneous admission of evidence that is cumulative of other admissible evidence is harmless and will not warrant a new trial.” (quotation omitted)). Indeed, L.R.D.’s counsel stated that she believed the facts contained in the document would “come in through other evidence or testimony.” Although the district court did not make an explicit determination regarding L.M.P.’s credibility, the district court did not abuse its discretion in making findings consistent with the “Stipulated Facts” document and the corresponding exhibits.

And, even assuming that the district court erred by admitting the “Stipulated Facts” document, L.M.P. is unable to demonstrate how she suffered prejudice. *See Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 842 (Minn. App. 2017) (“An appealing party bears the burden of demonstrating that an evidentiary error resulted in prejudice.”). An evidentiary error is prejudicial if it might reasonably have changed the result of the trial. *George v. Estate of Baker*, 724 N.W.2d 1, 9 (Minn. 2006). L.M.P. does not directly point to any of the stipulated facts as being clearly erroneous. The uncontested evidence through exhibits

and testimony is sufficient to support the district court's factual findings and its decision to terminate L.M.P.'s parental rights.

For these reasons, we conclude that the district court did not abuse its discretion by admitting the "Stipulated Facts" document, and that if there was error, such error was harmless.

II.

L.M.P. also contends that the district court committed clear error by specifically finding that, "No medical condition was identified that would have prevented [L.M.D.] from gaining weight. The medical providers identified the issue as possible child neglect." As discussed in more detail below, this challenged finding was not one of the stipulated facts agreed to by the parties. "[O]n appeal from a district court's decision to terminate parental rights, we will review the district court's findings of the underlying or basic facts 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). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660–61 (Minn. 2008) (quotation omitted).

The county again asserts that L.M.P. is procedurally barred from raising this issue because she failed to bring it in a post-trial motion. But whether the evidence sufficiently supports the district court's findings is not an argument that must be included in a motion for new trial in order to be preserved on appeal. See *In re Welfare of S.G.*, 390 N.W.2d 336, 341 (Minn. App. 1986).

L.M.P. asserts that other exhibits in the record actually contradict the district court’s finding that there was no medical condition that prevented L.M.D. from gaining weight. Exhibit 76 does note that, “Moderate oral thrush may be contributing to [L.M.D.’s] low intake” and sets forth a diagnosis of “Failure to thrive.” But Exhibit 47, which was not stipulated to but was admitted by the district court over hearsay objections, provides that, “The medical staff confirmed [L.M.D.] has no medical issues concerning the lack of weight gain.” This is supported by testimony evidence that there was not one identifiable medical reason for why L.M.D. was not gaining weight. And, according to the evidence, failure to thrive is less of a medical condition and more the result of the child not getting fed consistently.

L.M.P. also claims that the district court’s finding that “[t]he medical providers identified the issue as possible child neglect” is misleading and possibly erroneous. But Exhibit 47 states that, “The medical staff . . . concluded [L.M.D.] is not properly fed or is being neglected.” And there was testimony evidence that L.M.D. was not being properly fed before being readmitted into the hospital. Indeed, L.M.P. admitted that she did not feed L.M.D. at the hospital every time the medical staff requested that she do so. We conclude that the district court’s finding regarding L.M.D.’s weight-gain problems and possible neglect is supported by the evidence and not clearly erroneous.

Even if the district court committed clear error with this factual finding, the error is relatively minor and did not affect the decision as a whole. The district court made extensive factual findings that are supported by the record. Beyond L.M.P.’s failure to properly feed L.M.D. when she was born—which was a primary basis for adjudicating the

child as CHIPS—the district court articulated several reasons for why termination was appropriate. *See In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 316 (Minn. App. 2015) (“A juvenile court may find that a child cannot safely return home even though the factual bases for the conditions preventing the child’s return home are not identical to the factual bases for the conditions that led to the child’s out-of-home placement.”), *review denied* (Minn. July 21, 2015). For instance, the district court terminated L.M.P.’s rights on the ground that she “has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon [her] by the parent and child relationship.” *See* Minn. Stat. § 260C.301, subd. 1(b)(2). The district court pointed to L.M.P.’s unwillingness to sign and participate in the case plan or to enter inpatient treatment as recommended by her chemical health evaluation. *See In re Child of Simon*, 662 N.W.2d 155, 163 (Minn. App. 2003) (stating that failure to comply with key elements of court-ordered case plan provides ample evidence of neglect for duties of parent-child relationship). The district court also noted that she did not consistently provide urine samples for drug testing—missing 59 tests—demonstrating her lack of commitment to maintaining sobriety. Moreover, L.M.P. did not prioritize visiting the children with over 15 cancelled visits or no-shows from October 2016 to August 2017. Because any alleged error is harmless, we conclude that L.M.P. has not presented a basis to reverse the district court’s decision. *See In re Welfare of Children of D.F.*, 752 N.W.2d 88, 98 (Minn. App. 2008) (explaining that this court will not reverse due to harmless error).

Affirmed.