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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1815**

In the Matter of the Welfare of the Child
of: W. L. and R. R., Parents.

**Filed March 26, 2018
Affirmed as modified
Johnson, Judge**

Waseca County District Court
File No. 81-JV-16-667

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Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Randall,

Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

A father appeals from a district court's determination that his nine-year-old daughter is a child in need of protection or services. We conclude that four of the district court's findings of fact are clearly erroneous but that the remaining findings are not clearly erroneous. We also conclude that the evidence supports one of the district court's legal conclusions that the child is in need of protection or services. Therefore, we modify the district court's order and affirm.

FACTS

M.L.R. is a nine-year-old girl. Her mother, W.L., and her father, R.R., are divorced and have joint legal and physical custody. M.L.R. resides with each parent during alternating weeks.

M.L.R. has suffered from severe constipation, encopresis,¹ and incontinence since she was 14 months old. Between October 2013 and October 2016, M.L.R. was seen by Dr. Sarah Beckmann, a pediatrician, on approximately 18 occasions. R.R. attended all but two of the office visits. When Dr. Beckmann first examined M.L.R., she was six years old and was still wearing diapers. At an examination of M.L.R. on October 3, 2016,

¹Dr. Beckmann explained encopresis during her testimony as follows: "Constipation is common in children The longer constipation is there, the more a child tends to ignore the sensation of having to have a bowel movement. . . . [I]f it's not convenient to have a bowel movement when your body tells you it needs to go, you can suppress that urge. If you suppress that urge repeatedly day after day, then you are apparently unaware of it. It's still there, but you're not paying attention. Eventually, when you have that much fecal material pushing on your rectum, even a healthy, young child with strong muscles will leak stool, and we call that encopresis."

Dr. Beckmann determined that M.L.R.'s condition had regressed significantly. On October 7, 2016, Dr. Beckmann submitted a child-protection report to the Minnesota Prairie County Alliance (MNPrairie), the human-services agency for Waseca, Steele, and Dodge Counties. She stated that M.L.R.'s condition was "the most severe she has seen in a decade."

MNPrairie conducted an investigation. On October 18, 2016, MNPrairie petitioned the district court for an order declaring that M.L.R. is a child in need of protection or services (CHIPS). The petition alleged that R.R. and W.L. had failed to provide proper parental and medical care to M.L.R. Specifically, the petition alleged: (1) non-compliance with medical recommendations; (2) obstruction of medical care; (3) opposition to the administration of medicine at school; (4) non-compliance with a basic health regimen; (5) failure to cooperate with the other parent; (6) failure to provide basic hygiene needs; (7) failure to nurture and provide a healthy environment; and (8) failure to be proactive or responsive to accidental complications of encopresis-included urinary retention and accidents. The petition was based on four statutory grounds. *See* Minn. Stat. § 260C.007, subd. 6(3), (4), (5), (8) (2016 & Supp. 2017).

The district court conducted an evidentiary hearing on two days in December 2016. W.L. admitted the allegations in the petition, but R.R. opposed the petition. MNPrairie called four witnesses in its case-in-chief: Dr. Beckmann; Shelly Hovland, the director of a visitation center; Kaylee Warner, a mental-health case manager for South Central Human Relations in Waseca County; and Bridget Van Hecke, a child-and-family-assessment

worker for MNPrairie. R.R. called two witnesses: his roommate and Mandi Elliott, a licensed personal-care attendant. R.R. also testified on his own behalf.

In January 2017, the district court issued an order in which it concluded that M.L.R. was a child in need of protection or services. R.R. appealed. This court reversed and remanded for more specific findings of fact. *In re Welfare of Child of W.L.*, No. A17-0119, 2017 WL 3222021, at *1-2 (Minn. App. July 31, 2017). On remand, the case was re-assigned to a different judge because of the retirement of the judge who had presided over the December 2016 hearing and issued the January 2017 order. In August 2017, the district court held a hearing at which counsel presented oral arguments. Neither party introduced any additional evidence. In October 2017, the district court issued an order captioned, “Supplemental Findings of Fact and Order.” The district court concluded that M.L.R. was a child in need of protection or services. R.R. appeals.

D E C I S I O N

R.R. argues that the district court erred by concluding that M.L.R. is a child in need of protection or services. His argument has two parts. First, he argues that the district court erred by making eight findings of fact that he contends are clearly erroneous. Second, he argues that the district court erred by concluding that MNPrairie proved, by clear and convincing evidence, that M.L.R. is a child in need of protection or services.

I. Mootness

Before considering R.R.’s arguments, we must consider the threshold issue of mootness to ensure that a justiciable dispute exists. *See State v. Arens*, 586 N.W.2d 131, 132-33 (Minn. 1998).

At oral argument in this court on February 14, 2018, R.R.’s counsel informed the court that M.L.R.’s condition has improved, that she is living with her parents again, and that the district court’s second CHIPS order soon will expire. The record reveals that the district court issued an order on December 6, 2017, that states, “Jurisdiction of this file shall terminate in 60 days, unless a motion is filed by any of the parties for a hearing prior to that time.” No subsequent motion appears on the district court’s register of actions. Accordingly, the district court’s second CHIPS order expired on February 6, 2018. Nonetheless, counsel for both parties urged the court to consider their respective arguments and to determine whether the district court erred in issuing the October 2017 order.

It is well established that a court “will decide only actual controversies.” *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989). If a court is “unable to grant effectual relief, the issue raised is deemed to be moot resulting in dismissal of the appeal.” *Id.* An exception to the mootness doctrine exists if “collateral consequences attach to the judgment.” *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). Under this exception, an appeal will not be dismissed as moot if there are collateral consequences arising from the judgment, and an appellate court will presume that collateral consequences exist if “real and substantial disabilities attach to a judgment.” *Id.* at 329 (quotation omitted).

Because the October 2017 CHIPS order has expired and M.L.R. no longer is receiving services, this court cannot grant effectual relief. *See Weigel v. Miller*, 574 N.W.2d 759, 760-61 (Minn. App. 1998) (concluding that CHIPS appeal was moot because CHIPS petition had been dismissed). But the October 2017 order may have collateral consequences in the future because of the statutory time-to-permanency provisions. A

petition for permanency or for termination of parental rights “must be filed” by the time a “child has been in foster care or in the care of a noncustodial or nonresident parent for 11 months.” Minn. Stat. § 260C.505(a) (2016). If a child is in foster care, a district court generally “shall commence proceedings to determine the permanent status of [the] child by holding the admit-deny hearing . . . not later than 12 months after the child is placed in foster care or in the care of a noncustodial or nonresident parent.” Minn. Stat. § 260C.503, subd. 1 (2016). In calculating the 12-month period, “all time periods when a child is placed in foster care or in the home of a noncustodial parent [during the pendency of a CHIPS petition] are cumulated.” *Id.*, subd. 3(b)(1). Furthermore, “if a child has been placed in foster care within the previous five years under one or more previous petitions, the lengths of all prior time periods when the child was placed in foster care within the previous five years are cumulated.” *Id.*, subd. 3(b)(2). “Time spent on a trial home visit counts towards the requirement of a permanency hearing under this section” *Id.*, subd. 3(a). Accordingly, the validity of the district court’s October 2017 order could affect a future permanency determination, if another CHIPS petition were filed within the five-year period.

Thus, we conclude that the collateral-consequences exception to the mootness doctrine applies and that we should consider the merits of the parties’ respective arguments.

II. Findings of Fact

R.R. argues that the district court erred in eight of its findings of fact. This court applies a clear-error standard of review to a district court’s findings of fact. *See Rubey v. Vannett*, 714 N.W.2d 417, 423 (Minn. 2006). “A finding is clearly erroneous only if there

is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 322 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. July 21, 2015); *see also In re Welfare of Child of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998). We apply a “very deferential standard of review” to a district court’s findings of fact in a child-protection proceeding. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (Minn. App. 2009).

A. Finding of Fact No. 19

R.R. contends that the district court erred by finding that he “acknowledged to [Dr. Beckmann] he did not have [M.L.R.] sit on the toilet regularly . . . as recommended by Dr. Beckmann.” R.R.’s contention is not concerned with whether he followed Dr. Beckmann’s recommendations but with *whether he acknowledged* not having done so. Dr. Beckmann wrote in her treatment notes that she “repeatedly” had urged R.R. to have M.L.R. sit on the toilet for ten minutes after each evening meal but that R.R. was non-compliant or seemed unfamiliar with that aspect of the treatment plan. On cross-examination, however, Dr. Beckmann admitted that R.R. told her that he was complying with the bowel-training regimen. R.R. testified that he complied with the bowel-training regimen but that W.L. was not complying. We have carefully reviewed the record, and we do not see any evidence that R.R. acknowledged non-compliance with the bowel-training program. Thus, this finding of fact is clearly erroneous.

B. Finding of Fact No. 21

R.R. contends that the district court erred by finding that he “acknowledged to [Dr. Beckmann] that he did not give [M.L.R.] the Miralax every day as prescribed and only gave [M.L.R.] the medications as he deemed necessary.” Again, R.R.’s contention is not concerned with whether he gave M.L.R. her prescribed medications but with *whether he acknowledged* not having done so. Dr. Beckmann testified that, during M.L.R.’s appointments, R.R. expressed his concern that W.L. was not administering the medications as prescribed and stated that he was complying with the medication regimen. Dr. Beckmann testified that R.R. never told her that he was not giving the child her medications. Dr. Beckmann also testified that she did not have personal knowledge as to whether R.R. was administering the prescribed medications. We have carefully reviewed the record, and we do not see any evidence that R.R. acknowledged that he was not complying with the medication program. Thus, this finding of fact is clearly erroneous.

C. Findings of Fact Nos. 5, 25, 46, and 77

R.R. contends that the district court erred by finding that he refused to accept the services of a licensed personal-care attendant (PCA) in his home, that PCA services were available for 3.75 hours per day, and that Elliott quit because the PCA schedule was too complicated. It is undisputed that M.L.R. was approved for PCA services and that the services were for the child, not for the parents. The record shows that PCA services were utilized in W.L.’s home but not in R.R.’s home. The record is unclear as to why PCA services were not utilized in R.R.’s home. Warner testified that PCA services were offered to both R.R. and W.L. but that R.R. “chose not to engage in PCA” services. Warner

testified that R.R. indicated that he was capable of providing the care that M.L.R. needed and that he did not need a PCA. But R.R. testified that he never refused PCA services in his home. Rather, R.R. testified that he did not qualify for PCA services because his insurance provider would cover a PCA only in W.L.'s home. Elliott also testified that PCA services were available for 3.75 hours *per week*, not per day, which resulted in an unworkable and complicated schedule. However, Warner and Dr. Beckmann testified that M.L.R. was approved for "3.75 hours per day, every day of the week." Because the evidence is in conflict, we cannot conclude that there is "no reasonable evidence to support the finding" or that we are "left with the definite and firm conviction that a mistake occurred." *See D.L.D.*, 865 N.W.2d at 322 (quotation omitted). Thus, these findings of fact are not clearly erroneous.

D. Finding of Fact No. 38

R.R. contends that the district court erred by finding that, "at [supervised] visits, [R.R.] would not come out of the bathroom with [M.L.R.], when instructed to by staff." R.R. contends that the finding is clearly erroneous because it implies that he engaged in the conduct at issue on more than one occasion, whereas the evidence shows that he did so only once. We agree with R.R. that the finding, by using the plural form of the noun "visits," implies that he engaged in that conduct on more than one occasion. But Hovland testified to only a single incident at the visitation center in which R.R. assisted M.L.R. in the bathroom after being instructed by staff not to do so. There is no other evidence in the record that R.R. engaged in the same conduct on other occasions. Thus, this finding of fact

is clearly erroneous to the extent it states that such conduct occurred on more than one occasion.

E. Finding of Fact No. 53

R.R. contends that the district court erred by finding that he “was not receptive to new ideas” to help M.L.R. make progress. R.R. contends that this finding is contradicted by Warner’s testimony. Warner testified that R.R. attended each case planning conference (CPC) session, “never miss[ing] one,” and that he was actively engaged. But Warner also testified that R.R.’s “level of frustration” began “increasing over time.” Warner testified that R.R. was “not receptive” to certain recommendations and that he “would always listen, but the implementation of things just never happened.” She explained that “[R.R.] wasn’t fond of the idea of journaling” and indicated that “[h]e knew what he was doing was right.” She explained that service providers “didn’t even know what else to do any more” to encourage consistent co-parenting between R.R. and W.L. This testimony supports the district court’s finding. Thus, this finding of fact is not clearly erroneous.

F. Finding of Fact No. 67

R.R. contends that the district court erred by finding that his “reports that he has been following” the bowel-training program and the medication program are “contrary to the testimony of Dr. Beckmann based on her observations of [M.L.R.’s] medical conditions.” R.R.’s contention is not concerned with whether he actually followed the programs but whether his testimony is contrary to Dr. Beckmann’s testimony. Dr. Beckmann testified that R.R. self-reported to her that, in 2015 and 2016, he was following the treatment plans for bowel training and medications. Dr. Beckmann stated

that, based on her observations of M.L.R.'s medical condition, it was possible that R.R. was following her instructions. On cross-examination, Dr. Beckmann acknowledged that her reports state that M.L.R. appears to adhere to the treatment routine in R.R.'s home. This testimony supports, not contradicts, R.R.'s testimony. Thus, this finding of fact is clearly erroneous.

Thus, the district court made four findings of fact that are clearly erroneous. The other four findings of fact that R.R. challenged are not clearly erroneous.

III. Conclusions of Law

R.R. argues that the district court erred by concluding that MNPrairie proved, by clear and convincing evidence, that M.L.R. is a child in need of protection or services.

To adjudicate a child as a child in need of protection or services, a district court must find that at least “one of the enumerated child-protection grounds exists and the subject child needs protection or services as a result.” *S.S.W.*, 767 N.W.2d at 732. If a parent challenges the sufficiency of the evidence, we inquire into whether the district court’s findings “sustain the conclusions of law and the judgment.” *Id.* at 733 (quotation omitted).

In its October 2017 order, the district court summarized its findings of historical fact as follows:

The witnesses called by Petitioner credibly testified [M.L.R.] is a child with enormously serious and complex medical and mental health issues that seriously threaten her emotional and physical health and overall well-being.

The court finds Father has not fully cooperated in working with a variety of service providers, has not fully

focused his attention on meeting [M.L.R.]’s needs, has interfered with services for his daughter, and has consistently blamed Mother for [M.L.R.]’s medical and mental health needs, thereby excusing himself from his responsibilities to appropriately care for [M.L.R.].

The evidence is overwhelming that [M.L.R.]’s health can only improve if both parents are under the jurisdiction of the Court so that coordinated services can be provided to [M.L.R.].

The district court also summarized its findings of historical fact with respect to each of the four statutory bases alleged in the CHIPS petition. We consider the sufficiency of the evidence with respect to each statutory basis. In doing so, we do not rely on the findings of fact that we have concluded are clearly erroneous. Rather, we rely only on the findings that R.R. did not challenge and the challenged findings that we have concluded are not clearly erroneous.

A. Subdivision 6(4): Special Care

A child is in need of protection or services if the child “is without the special care made necessary by a physical, mental, or emotional condition because the child’s parent, guardian, or custodian is unable or unwilling to provide that care.” Minn. Stat. § 260C.007, subd. 6(4). The district court summarized the findings of historical fact relevant to this statutory basis as follows:

[M.L.R.]’s physical health and mental health are negatively affected by the lack of consistency in medication, lack of follow-through by the parents, and services not consistent in both parents’ homes. Additionally, [M.L.R.] needs daily baths given her medical condition, which hasn’t happened in each parents’ homes.

The district court's findings of fact are sufficient to support this legal conclusion. The district court found that R.R. opposed the administration of medication at school, bathed M.L.R. only every other day (as opposed to daily), and failed to take advantage of PCA services and family-based services. The district court also found that M.L.R.'s condition persisted and became very serious while M.L.R. was in R.R.'s care. These findings of fact support the district court's conclusion that R.R. is either unable or unwilling to provide the special care that M.L.R. needs, perhaps because he is unable to control the care provided by M.L.R.'s mother when M.L.R. is in her custody.

Thus, the district court did not err by concluding that MNPrarie proved this statutory basis by clear and convincing evidence.

B. Subdivision 6(3): Necessary Care

A child is in need of protection or services if the child "is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care." *Id.*, subd. 6(3). The district court summarized the findings of historical fact relevant to this statutory basis as follows:

[M.L.R.] eats out 1-2 times per week, based on what Father reported during her interview. This diet is not proper for someone with [M.L.R.]'s medical conditions. [M.L.R.] has had soiled clothing at school, with no extra clothes, and the supply that school had was dwindling fast. Without the clean clothes, [M.L.R.] is subject to leaving class, taking away from her education and contributing to poor self-esteem.

The district court's findings of fact supporting this legal conclusion concern two issues: food and clothing. With respect to the issue of food, the district court found that it

was necessary for R.R. to provide M.L.R. with healthy snacks, including fruits, vegetables, water, and a limited consumption of cheese and fruit juice. The district court also found that being overweight affected M.L.R.'s encopresis, body image, and overall well-being. R.R. testified that he usually made home-cooked meals with vegetables and took M.L.R. out to eat only once or twice each month. R.R.'s roommate testified that R.R. makes home-cooked meals that include proteins and vegetables approximately five to six times each week. There is no finding that the food R.R. prepared at home was inappropriate and no finding concerning the type of food that M.L.R. ate when she and R.R. went out to eat. Accordingly, the findings of fact do not support a conclusion that M.L.R. was "without necessary food . . . for [her] physical or mental health" because R.R. was "unable or unwilling to provide that care." *See id.*

With respect to the issue of clothing, R.R. testified that M.L.R.'s school did not consistently inform him when M.L.R. needed a change of clothing. R.R. testified that there never was an instance when he did not bring in additional clothing for M.L.R. when the school contacted him. Accordingly, the findings of fact do not support a conclusion that M.L.R. was "without necessary . . . clothing . . . for [her] physical or mental health" because R.R. was "unable or unwilling to provide that care." *See id.*

Thus, the district court erred by concluding that MNPrairie proved this statutory basis by clear and convincing evidence.

C. Subdivision 6(5): Medical Neglect

A child is in need of protection or services if the child

is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from an infant with a disability with a life-threatening condition. The term “withholding of medically indicated treatment” means the failure to respond to the infant’s life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician’s or physicians’ reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician’s or physicians’ reasonable medical judgment [if treatment would be futile given the circumstances].

Id., subd. 6(5). The district court summarized the findings of historical fact relevant to this statutory basis as follows:

[M.L.R.] is being medically neglected. It is concerning enough that Father and Mother are not following the doctor’s orders, but also they were not giving [M.L.R.] the medications as prescribed. The inconsistencies between the parents’ homes are of concern for [M.L.R.]’s best interests. It is only Father’s self-reporting that he’s giving medications as prescribed. Father also advised that he continues to smoke in his home, which has a negative effect on [M.L.R.]’s asthma.

The district court found that Dr. Beckmann prescribed Miralax every day and Biscodyl every other day and that R.R. and W.L. needed help following through on M.L.R.’s medical needs. R.R. testified that he complied with the prescribed medication regimen but that W.L. was non-compliant. As we concluded above, there is a lack of evidence that R.R. “with[held] . . . medically indicated treatment,” *see id.*, by not complying with Dr. Beckmann’s medication regimen. *See supra* parts II.B. & II.F. The record shows that R.R. attended 16 of the 18 pediatrician appointments, attended mental-health therapy sessions, and sought out a specialist’s opinion. The district court found that

R.R. did not stop smoking in his home even after Dr. Beckmann advised it because of M.L.R.'s asthma, but asthma was not the basis of the CHIPS finding, and there is no evidence that M.L.R.'s asthma condition was "a life-threatening condition." *See id.* It is no doubt true that M.L.R.'s encopresis condition worsened during the relevant time period, but the evidence and the findings of fact do not show that the worsening occurred because of medical neglect by R.R.

Thus, the district court erred by concluding that MNPrairie proved this statutory basis by clear and convincing evidence.

D. Subdivision 6(8): Proper Parental Care

A child is in need of protection or services if the child is "without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian." *Id.*, subd. 6(8). The district court summarized the findings of historical fact relevant to this statutory basis as follows: "Father has made it obvious that he does not want to engage in services, despite professionals making recommendations. Father refused to follow through and lacks consistency for [M.L.R]."

In *S.S.W.*, the petitioner introduced evidence that the parent had a history of "mental health issues, chemical dependency, history of sexual abuse, and other areas of risk [that] impair her ability to provide proper parental care." 767 N.W.2d at 725, 733 (quotation marks omitted). The district court nonetheless concluded that the petitioner had not established this statutory ground because there was insufficient evidence that the parent did not provide proper parental care. *Id.* at 734-35. This court affirmed. *Id.* This case presents a less compelling case of improper parental care because the district court did not

make any findings concerning R.R.’s “emotional, mental, or physical disability, or state of immaturity.”

Thus, the district court erred by concluding that MNPrairie proved this statutory basis by clear and convincing evidence.

In sum, the findings of fact are sufficient to support one of the district court’s conclusions that underlies its CHIPS determination. Because one statutory basis is sufficient, *see id.* at 732, we conclude that the district court did not err by adjudicating M.L.R. a child in need of protection or services.

Affirmed as modified.