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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0177**

In the Matter of the Welfare of the Children of:
S.E.M., J.M.K., S.M.M. and D.J.S., Parents.

**Filed May 29, 2018
Affirmed
Kirk, Judge**

Rice County District Court
File No. 66-JV-17-2221

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

UNPUBLISHED OPINION

KIRK, Judge

In this juvenile-protection matter, unmarried appellant-father challenges the district court's order adjudicating his child as a Child in Need of Protection or Services (CHIPS), arguing that: (1) the county did not show by clear and convincing evidence that the child is CHIPS, and that the district court's findings do not support the CHIPS adjudication; (2) the district court violated father's constitutional rights to parent his child by preventing him from pursuing custody of the child in family court; and (3) the CHIPS adjudication and disposition order are not in the child's best interests. We affirm.

FACTS

Appellant-father J.M.K. and mother S.E.M. share a three-year-old son (the child). Father and mother never married but were in a relationship and lived together before and after the child's birth until mother left the home in September 2017. Father signed a recognition of parentage (ROP) for the child and was named as the child's father on the child's birth certificate, but he did not seek custody of, or parenting time with, the child because "[he] had no reason to." Mother and father worked opposite schedules and each cared for the child while the other parent was working. Mother's non-joint teenage daughter (the daughter) lived with the family. Mother's non-joint son (the son) also occasionally stayed with them, pursuant to a custody and parenting time order between mother and son's father S.M.M.

On September 6, 2017, Rice County police and social services received numerous reports of mother's illegal drug use in and outside of the home, and reports that mother was selling illegal drugs at the home while the children were present. Police and social services

went to the home that day and spoke with father who wanted mother out of the house immediately due to her drug use. They also spoke with mother, who appeared to be under the influence and admitted to illegal drug use. Mother left the home that day.

A CHIPS petition was filed under Minn. Stat. § 260C.007, subd. 6(9) (Supp. 2017), on September 8. The petition alleged that the child’s environment was injurious or dangerous based on mother’s criminal drug activity in the home.¹ A guardian ad litem (GAL) was appointed for the child. On September 11, the district court found that there was a prima facie showing that the child was CHIPS based on endangerment from mother, and ordered that the child remain in the temporary placement of father, subject to the county’s supervision. Mother entered treatment for drug addiction later that month, and the child’s temporary placement with father continued.²

On October 10, father filed an action in family court to establish his paternity, custody, and parenting time for the child, and sought sole legal and sole physical custody. In juvenile court, father also moved to dismiss the CHIPS petition as it related to his child. In the

¹ Additional statutory grounds were cited in the CHIPS petition which are not relevant to this appeal. The CHIPS petition for mother’s two non-joint children is also not part of this appeal.

² The district court ordered that the child “remain in the temporary physical and legal custody of father.” However, the responsible social services agency, not a noncustodial parent, has legal responsibility for a child “taken into custody” and placed with a noncustodial parent under the CHIPS statute. See Minn. Stat. § 260C.178, subd. 1 (2016) (noting that a child “taken into custody” under Minn. Stat. § 260C.175, subd. 1(b), (c) (2016), may initially be released to the custody of a parent or another suitable person, and that following the emergency removal hearing, the court may order a child into the home of a noncustodial parent subject to conditions, under the legal responsibility of the responsible social services agency); see also Minn. Stat. § 260C.181, subd. 2 (2016) (noting that a child’s placement should be in the “least restrictive setting,” and in “closest proximity to the child’s family as possible,” including placement with a child’s relative).

alternative, he asked to intervene as a party. Father also submitted an agreement between mother and him signed after the CHIPS action was filed, wherein mother agreed that father could have permanent sole legal and sole physical custody of the child. In an October 20 order, the juvenile court allowed father to intervene as a party but denied his motion to dismiss the CHIPS petition for his child. The juvenile court also asserted its original and exclusive jurisdiction over issues related to the child's custody and barred father from pursuing his custody action in family court. Father's subsequent motions to amend the court's October 20 findings were denied.

The matter went to trial on November 20, 2017. Mother admitted to the CHIPS petition under Minn. Stat. § 260C.007, subd. 6(9). The district court accepted the admission and found that there was clear and convincing evidence to support a CHIPS adjudication. Mother's sworn testimony was admitted as evidence, and mother was excused from the remainder of the trial without objection. The trial proceeded for father. Father, S.M.M., the GAL, the child protection worker, and the county social worker testified.

The district court adjudicated the child as CHIPS under Minn. Stat. § 260C.007, subd. 6(9), in its December 12, 2017 written adjudication order. The child remained in temporary placement with father pending the disposition hearing. Father moved for a new trial or for the court to amend its adjudication findings. Father's motion was heard and denied at the start of a disposition hearing. The court filed its disposition order on January 19, 2018, continuing its previous placement of the child with father subject to the county's supervision and recommending services for mother. Minn. Stat. § 260C.201, subd. 1(a) (2016) (following

a CHIPS adjudication the court may place the child under the protective supervision of the social services agency in the home of a parent under conditions).

Father appealed the adjudication and disposition orders on January 30. Thereafter, the district court filed an intermediate disposition order on March 15, superseding the January 19 order.

D E C I S I O N

I. The district court did not abuse its discretion in adjudicating the child as CHIPS.

A child is CHIPS when the petitioner proves “that one of the enumerated child-protection grounds exists and that the subject child needs protection or services as a result.” *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 728 (Minn. App. 2009); see Minn. Stat. § 260C.007, subd. 6 (Supp. 2017) (listing the grounds for finding a child CHIPS). “[The] allegations of a petition alleging a child to be in need of protection or services must be proved by clear and convincing evidence.” Minn. Stat. § 260C.163, subd. 1(a) (2016). An appellate court “will closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing.” *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998). “We review the juvenile court’s factual findings for clear error and its findings of a statutory basis for the order for abuse of discretion.” *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), review denied (Minn. July 20, 2015). “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. There is substantial evidence in the record to support the CHIPS adjudication and the district court's findings.

In this case, the child was alleged to, and adjudicated to, be CHIPS because the child's "behavior, condition, or environment [wa]s such as to be injurious or dangerous to the child or others," due to mother's criminal drug activity in the home. Minn. Stat. § 260C.007, subd. 6(9). Father argues that the county did not prove by clear and convincing evidence that the child is CHIPS, and that the district court's adjudication findings are not supported by substantial evidence because father is a fit and proper parent who has cared for the child since birth, and father removed mother from the home when he learned of her drug use.

In adjudicating the child CHIPS, the district court found that mother used various controlled substances in the home while caring for the child, that mother had a history of untreated drug abuse for over a year, and that as a result, mother was unable to provide proper care and supervision for the child, and the child was endangered. The court's findings are supported by substantial evidence in the record. The record shows that due to mother and father's different work schedules, mother was responsible for caring for the child when father was at work and vice versa. Mother admitted to the CHIPS petition and her testimony that she was actively using illegal drugs in the home while the child was present was admitted into evidence. Father, S.M.M., the county child protection workers, and the GAL also provided testimony substantiating the allegations in the CHIPS petition.

The record shows that father, S.M.M., and mother's non-joint children were aware of or had suspicions about mother's illegal drug activity and were concerned. Father called the police and social services because he wanted mother out of the home. Father also testified

that mother had been hospitalized for a cocaine overdose the year before and that as far as he knew she did not complete the recommended treatment. On this record, there was clear and convincing evidence to support the court's findings that the child was in danger due to mother's ongoing illegal drug use in the home under Minn. Stat. § 260C.007, subd. 6(9), and we defer to the court's findings. *See S.S.W.*, 767 N.W.2d at 734 (noting our "very deferential" review of CHIPS findings).

B. The juvenile court's original and exclusive jurisdiction precludes a concurrent custody action by father in family court.

Father contends that even if the county showed endangerment from mother as a statutory basis for CHIPS, as soon as mother left the home on September 6, 2017, the child was no longer in need of protection or services as a result because father is a fit and proper parent. Father argues that the court's analysis that the child would return to mother without the CHIPS action is purely speculative, as the child is, and has always been, safe and cared for by father, and that father should be allowed to pursue custody of the child in family court.

There is no dispute that father is a good parent. The district court, the GAL, the county workers, and mother all agreed that the child is presently safe and cared for by father with mother out of the home. However, in issuing its adjudication order, the court stressed that the child's placement with father was temporary and that he did not have any custodial rights because he never pursued a custody action in family court prior to the CHIPS petition being filed. The court held that father was prevented from doing so now under Minn. R. Juv. Prot. P. 50.01, subd. 3. The court explained that without a CHIPS adjudication, the child would be returned to the custody of a mother who was unable to care for him.

The existence of subject-matter jurisdiction 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). “When interpreting a statute, we first look to see whether the statute’s language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citation omitted). “[O]ur goal is to ascertain and effectuate the intention of the legislature.” *Id.* at 278; Minn. Stat. § 645.16 (2016).

Here, the child’s parents are not married, and father signed the ROP under Minn. Stat. § 257.75, subd. 1 (2016), which gave him the right to commence an action to establish custody and parenting time under chapter 518. Minn. Stat. §§ 257.541, subd. 3, .75, subd. 3 (2016). But until a temporary or permanent custody order is entered, the biological mother of a child who is not married to the child’s father when the child is born has sole custody. *See* §§ 257.541, subd.1, .75, subd. 3 (2016). As such, because father and mother were unmarried, and because father did not pursue custody or parenting time for the child before the CHIPS action was filed, the district court correctly concluded that the child’s temporary placement with father did not afford father custodial rights outside of the CHIPS action. *See* Minn. Stat. § 260C.201, subd. 1(a)(1)(i) (2016) (noting that an order placing a child in the home of a parent who does not otherwise have legal custody in a CHIPS action “does not confer legal custody on that parent”).

The juvenile-protection statute provides that “[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, or neglected and in foster care.” Minn. Stat. § 260C.101, subd. 1

(2016). The Minnesota Rules of Juvenile Protection Procedure also state that “[t]he juvenile court has original and exclusive jurisdiction under Minnesota Statutes, section 260C.101, [and] over any determinations or decisions under Minnesota Statutes, chapter 260C.” Minn. R. Juv. Prot. P. 50.01 subd. 2. “The family court shall not make determinations regarding custody or parenting time until the juvenile court makes an order under Rule 50.06, subdivision 2.” *Id.* at subd. 3.

In turn, Minn. R. Juv. Prot. P. 50.06, subd. 2, provides that when a parentage matter is pending, the juvenile court must provide notice of any juvenile-protection order that determines permanency, dismisses the CHIPS matter, or any other order as required by the juvenile court. Under the plain and unambiguous language of Minn. Stat. § 260C.101, subd. 1, and Minn. R. Juv. Prot. P. 50.01, subds. 2 and 3, the juvenile court holds original and exclusive jurisdiction until the CHIPS action is dismissed, permanency is established, or the matter is resolved. *See* Minn. R. Juv. Prot. P. 50.06, subd. 2.

We reached this conclusion in *Stern v. Stern*, a juvenile-protection case where a grandmother challenged a juvenile court’s ruling that the family court did not have concurrent jurisdiction to grant grandmother’s de facto custody petition while the child protection and permanency matters were pending in juvenile court. 839 N.W.2d 96, 98 (Minn. App. 2013). Like the case at hand, the children in *Stern* were temporarily placed with their grandmother as a result of a CHIPS proceeding. *Id.* In upholding the district court’s order, we said that the plain language of Minn. Stat. § 260C.101, subd. 1, showed the legislature’s broad intent for the juvenile court to hold “original and exclusive jurisdiction,” and that to allow the family court to exercise concurrent jurisdiction over the same issues would produce an absurd result.

Id. at 100-01. Where, as here, the CHIPS and permanency matters remain pending, the family court must defer to the juvenile court's exclusive jurisdiction over the child and over the relevant issues. *Id.* at 105.

Father's challenge to the speculative nature of the court's decision is also without merit. The written custody agreement signed while mother was in treatment is of no effect as it was signed by mother after the CHIPS petition was filed. And father ignores that the outcome of child-protection and permanency matters are often speculative. *See Matter of Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (noting that in an action for termination of parental rights, the district 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") (quotation omitted).

On this record, there is substantial evidence to support the district court's CHIPS adjudication under section 260C.007, subdivision 6(9), and the court's conclusion that if the CHIPS action was dismissed, the child would be returned to the child's only custodial parent, mother. *See* Minn. Stat. §§ 257.541, subds.1, 3, .75, subd. 3. Under the plain language of Minn. Stat. § 260C.101, subd. 1, and the juvenile-protection rules, as well as our clear interpretation in *Stern*, the district court properly concluded that the juvenile court had original and exclusive jurisdiction over the child and over the relevant issues and did not err in concluding that father's concurrent custody action in family court was precluded.

II. Father's constitutional challenges and public policy arguments.

To further support his argument, father raises several constitutional challenges to the district court's CHIPS adjudication. First, he argues that under *Troxel v. Granville*, he has a

fundamental and inherent constitutional right to parent his own child, and that there is a presumption that he is fit and suitable to do so. 530 U.S. 57, 68-70, 120 S. Ct. 2054, 2061-62 (2000) (upholding a mother’s fundamental right to determine the care, custody, and control of her children without governmental interference, where mother was a fit parent, and presumption of her parental fitness had not been overcome); see *SooHoo v. Johnson*, 731 N.W.2d 815, 820-22 (Minn. 2007) (recognizing that the *Troxel* decision is a plurality opinion and adopting much of its analysis).

Father originally raised his argument under *Troxel* in his motion to dismiss the CHIPS action for his child, which the then-presiding district court judge denied, and in doing so, concluded that *Troxel* did not apply because a prima facie case of endangerment to the child by mother had been found, giving the county a basis to interfere. The later-presiding judge at the CHIPS trial relied on this ruling in again denying father’s *Troxel*-based arguments.

Here, unlike *Troxel*, the district court found that there was a prima facie case that the child was endangered in the care of the child’s sole custodian, mother. Because there was evidence that the child was in a dangerous environment due to mother’s criminal drug activity, the county’s initial and continued interference for the child’s protection was justified. And because father did not have custodial rights to the child when the CHIPS petition was filed, it was only through the CHIPS action that father was granted temporary placement of the child, so as to continue caring for the child as he has always done since the child’s birth.

Father next argues that he was denied his constitutional rights as a parent. See Minn. Stat. § 260C.007, subd. 25 (2016) (entitling a “parent” to the legal rights, privileges, duties, and obligations consistent with Minn. Stat. §§ 257.51-257.74 or 257.75). Father contends

that the district court violated his rights to equal protection and to due process by preventing him from pursuing his custody action in family court. Father raised these issues below, but the district court did not explicitly consider them, and thereby implicitly denied them. *Palladium Holdings, LLC v. Zuni Mortg. Loan Trust*, 775 N.W.2d 168, 177-78 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010).

No state shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 2. The Equal Protection Clauses “mandate that all similarly situated individuals shall be treated alike, but only invidious discrimination is deemed constitutionally offensive.” *Scott v. Minneapolis Police Relief Ass’n*, 615 N.W.2d 66, 74 (Minn. 2000) (quotation omitted). Father contends that his parental rights to the child were treated as inferior to mother’s rights because they were unmarried. But father’s equal-protection argument is without merit because father and mother are not similarly situated. Before the CHIPS petition was filed, mother had sole custody of the child as a matter of law, while father had the right to pursue a custody action, which he failed to exercise. Further, the CHIPS petition neither made allegations against father, nor recommended services for him.

Similarly, in raising a due-process challenge, father fails to show what interest he has been deprived of. *See Stern*, 839 N.W.2d at 105 (rejecting a similar due-process challenge). Father had no custodial rights when the CHIPS petition was filed. After the petition was filed, father was allowed to intervene as a party in the CHIPS action as a matter of right. *See Minn. R. Juv. Prot. P. 23.01*, subd. 3. As a party, he had the opportunity to argue in support of or against the CHIPS petition under *Minn. R. Juv. Prot. P. 21.02(h)*. Further, the March 15, 2018

intermediate dispositional order indicates that father has filed a petition seeking permanent legal and physical custody under Minn. Stat. § 260C.515, subd. 4 (2016), in the pending permanency matter. And based on the record before this court, the child was temporarily placed with father from September 2017 through at least March 2018.³

We conclude that, on this record, father's constitutional arguments are without merit. Father also argues that the juvenile-protection statute and rules run counter to public policy because they discourage a father from taking action when his child is in need of protection. Father's underlying concern appears to be with the legal protections, or lack thereof, afforded to unmarried fathers who have signed a ROP under Minnesota law. Again, we note that father had the right to pursue a custody action for the child after signing the ROP but failed to do so.

At the same time, we acknowledge that father, who has lived with, cared for, and raised the child since birth, does raise compelling policy arguments. Father seeks a custody order from the family court because he fears that the child may be returned to mother's custody by the juvenile court without due regard for his rights as a father. But our role is to determine if the district court erred, not to make policy decisions, and when interpreting the law, we cannot ignore its plain language in favor of policy. See Minn. Stat. § 645.16 ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."); see also *Buntje v. Buntje*, 511 N.W.2d 479, 482 (Minn. App. 1994) (citing Minn. Stat. § 645.16 (1992))

³ Both parties indicated at the time of oral argument that this is no longer the case in the ongoing district court proceedings.

(acknowledging a father’s compelling policy arguments in a child support modification action but ultimately upholding the explicit language of the statute).

Father’s argument that the juvenile court erred by declining to allow him to pursue custody of the child in family court is negated by the plain language of the juvenile-protection statute and rules providing for the juvenile court’s ongoing and exclusive jurisdiction. *See* Minn. Stat. § 260C.101, subd. 1; Minn. R. Juv. Prot. P. 50.01, subds. 2, 3. To accept father’s interpretation, while all issues in the CHIPS and permanency matters remain pending, could produce an absurd result, and one not intended by the legislature—the premature return of the child to mother. *See* Minn. Stat. § 645.17 (providing that a reviewing court presumes that the legislature does not intend “absurd, impossible of execution, or unreasonable” results).

Father also maintains that the rules require the juvenile and family courts to cooperate, and that his custody action could have been calendared at the same time as the CHIPS matter. The juvenile-protection rules provide that the family court has concurrent jurisdiction over a child’s name, parentage, or child support while a CHIPS or permanency matter is pending but not over custody or parenting-time decisions. *See* Minn. R. Juv. Prot. P. 50.01, subd. 3. With the consent of the juvenile-protection judicial officer, a parentage matter under Minn. Stat. §§ 257.51 to 257.74 (2016), may be calendared at the same time as the juvenile-protection matter. Minn. R. Juv. Prot. P. 50.02, subds. 1, 2. In addition, the comment to rule 50.01 suggests that the family and juvenile courts should cooperate and make the two systems work together. *See* Minn. R. Juv. Prot. P. 50.01 2014 advisory comm.

Even if we assume, without deciding, that father’s custody action is a type of parentage matter that could be heard at the same time as a juvenile-protection matter, this would not

negate the juvenile court's ongoing original and exclusive jurisdiction over the child. There is a difference between allowing a custody action to be heard at the same time as the CHIPS matter, and allowing the family court to make a custody determination, the latter of which, as discussed at length, cannot take place until the CHIPS action is dismissed, permanency is established, or the matter is resolved. Simultaneous calendaring, even if permissible, would not have affected the family court's ability to act or the result of the juvenile-protection action.

III. We defer to the district court's discretion in its posttrial and dispositional rulings.

Finally, father challenges the district court's posttrial and dispositional orders. First, father challenges the denial of his posttrial motion for a new trial, or alternatively, for amended findings in the adjudication order. The district court heard, considered, and rejected father's posttrial motion on the record at a disposition hearing. Father fails to raise any basis to challenge the court's discretionary ruling, and we defer to that discretion. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 892 (Minn. 2010) ("We review a district court's new trial decision under an abuse of discretion standard."); *In re Guardianship of Guaman*, 879 N.W.2d 668, 672 (Minn. App. 2016) (noting our discretionary review of a motion for amended findings).

Second, father challenges the district court's January 19, 2018 disposition order, which we have discretion to review pursuant to a March 13, 2018 order of this court. However, as the county points out, the original disposition order has already been superseded by the March 15, 2018 intermediate dispositional review order, a copy of which the county attached to its appellate brief for our review. *See Minn. R. Civ. App. P. 103.04* (noting that appellate courts may address issues as justice requires, as well as rulings affecting the ruling from which an

appeal is taken). At oral argument, both parties stressed the pending nature of the CHIPS and permanency actions, with ongoing hearings currently taking place at the district court.

“The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child.” Minn. Stat. § 260C.001, subd. 2(a) (2016). The purpose of juvenile-protection proceedings is to preserve and strengthen family ties when possible; to remove a child only when the child’s safety, welfare, and best interests cannot be adequately safeguarded otherwise; and to ensure appropriate permanency planning for the child, including reunification efforts with **both parents**. Minn. Stat. § 260C.001, subd. 2(b)(3), (7) (ii). The comment to rule 50.01 emphasizes:

The purpose of Rule 50 is to help expedite decision-making in parentage matters in family court when a juvenile protection matter is pending. But, there are differences between juvenile protection and parentage matters. Judges, professionals, and families involved in both should understand the differences between the two, recognize the benefits to the child in making the two systems work together, and work to deliver known advantages of having two legal parents for the child.”

Minn. R. Juv. Prot. P. 50.01 2014 advisory comm.

A review of the record gives us no indication that the juvenile court has thus far failed to act in the child’s best interests, acted contrary to the law, or failed to consider father’s interest as a noncustodial parent. Given the ongoing and intermediate nature of the dispositional proceedings in the CHIPS action, and the now-pending permanency action, we decline to reach the merits of the now-superseded January 2018 disposition order. We defer to the district court’s ongoing and broad discretion to order a disposition that is in the best interests of the child and one that takes into account the purpose and procedure outlined in the

juvenile-protection rules and statute, including the advantages of having “two legal parents” and of having the family court and juvenile court systems “work together.” *See In re Welfare of J.S.H.-G.*, 645 N.W.2d 500, 504 (Minn. App. 2002) (noting that, absent an abuse of discretion, we will not disrupt the district court’s broad discretion to order dispositions authorized by law), *review denied* (Minn. Aug. 20, 2002).

Affirmed.