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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0600**

In the Matter of the Welfare of the Child of:
R. J. L., Parent.

**Filed October 22, 2018
Affirmed
Bratvold, Judge**

Pipestone County District Court
File No. 59-JV-17-57

Travis J. Smith, Kayla M. Johnson, Smith & Johnson, Slayton, Minnesota (for appellant R.J.L.)

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Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant-mother challenges the district court's order adjudicating her child to be in need of protection or services (CHIPS), arguing that: (1) the district court failed to comply with Minn. R. Juv. Prot. P. 40.02 (rule 40.02) when it did not adjudicate CHIPS

“at a hearing”; (2) the district court failed to comply with rule 40.02 because it did not adjudicate CHIPS within 90 days of the admit/deny hearing; and (3) the district court abused its discretion in determining that mother failed to comply with the conditions of the stay. We conclude that mother is not entitled to relief because the district court’s failure to adjudicate CHIPS “at a hearing” did not prejudice mother, the CHIPS order was issued before the stay of adjudication expired, and the district court did not abuse its discretion in finding that mother failed to comply with the stay conditions. Accordingly, we affirm.

FACTS

Appellant-mother, R.J.L., was convicted of “counterfeiting/fraud and probation violation[s],” and sentenced to the Minnesota Women’s Prison in Shakopee. In September 2017, while incarcerated, mother gave birth to R.X.L.F. The prison lacked facilities for infants and R.X.L.F.’s father was unknown. Mother and respondent Southwest Health and Human Services (the county) reached a voluntary out-of-home placement agreement to place R.X.L.F. in foster care with his sibling, Child 2.¹ R.X.L.F. has remained there since September 2017.

Respondent Alex Miller, manager of the Fifth Judicial District Guardian ad Litem program, filed a CHIPS petition alleging that R.X.L.F. was in need of protection or services because (1) the child is without necessary food, clothing, shelter, education, or other required care for the child’s physical or mental health, *see* Minn. Stat. § 260C.007, subd.

¹ Child 2, born in 2015, is also mother’s biological child. Mother voluntarily terminated her rights to Child 2, who is not a subject of the CHIPS petition on appeal.

6(3) (2016); and (2) the child is without the special care made necessary by a physical, mental, or emotional condition because the child's parent is unable or unwilling to provide that care, *see* Minn. Stat. § 260C.007, subd. 6(4) (2016).

On December 21, 2017, at the admit/deny hearing, the parties informed the court that they had reached an agreement. Mother agreed to admit that R.X.L.F. was in need of protection or services, and the parties requested that the court withhold adjudication of the CHIPS petition for 90 days, as authorized by Minn. R. Juv. P. 40.02, provided that mother follow several conditions. After a brief discussion, the district court stated that mother's consent to the CHIPS finding it "ha[d] been voluntarily and intelligently given" and that the district court would "issue an order" after the hearing.

On January 2, 2018, the district court issued an order with these conclusions of law: (1) R.X.L.F. met the statutory definition of a child in need of protection; (2) R.X.L.F. was without necessary food, clothing, shelter, education, or other required care; and (3) "[r]eunification . . . [was] not in [R.X.L.F.'s] best interests." The district court ordered that the CHIPS adjudication was stayed for a period of ninety (90) days and was contingent on the following conditions:

1. The Child shall remain in the custody of the Agency for placement in licensed foster care.
2. The Mother shall complete parenting education classes and/or provide verification of completion of the same.
3. The Agency shall schedule a Diagnostic Assessment for the Mother and the Mother shall make satisfactory progress toward compliance with the recommendations.
4. The Agency shall schedule a Chemical Use Assessment for the Mother and the Mother shall make satisfactory progress toward compliance with the recommendations.

5. The Mother shall abstain from use and/or possession of non-prescription drugs and shall submit to random testing to verify such abstinence.
6. The Mother shall obtain proper housing for herself and the Child and ensure that all basic needs of the Child are met. The Agency shall follow-up with the Mother to ensure proper housing and supplies are in place for the Child upon the Mother's release from custody.
7. That the Mother shall cooperate with the Agency, the guardian, and the case plan.

The parties appeared for a review hearing on March 20, 2018; the court received reports from the guardian ad litem (GAL) and a social worker on behalf of the county and heard mother's testimony. The GAL report stated that mother had completed her prison sentence and had entered inpatient chemical-dependency treatment at Project Turnabout in Granite Falls. The GAL report also stated that mother and R.X.L.F. had visits once a week, and that these visits were positive and mother was very attentive with R.X.L.F. The GAL report noted that mother had located housing in Iowa and was working with her parole officer to complete an Interstate Compact on the Placement of Children (ICPC) in order to move to Iowa. The GAL report recommended that R.X.L.F. be adjudicated CHIPS and that legal custody remain with the county until mother completed inpatient treatment programming and a diagnostic assessment, located safe and stable housing, "determine[d] how she will financially maintain housing and meet her and [R.X.L.F.'s] physical needs," and continued to abstain from "mood altering chemicals."

The county report stated that mother had completed parent-education classes and cooperated with a chemical-dependency assessment. The county report also stated that mother had signed all requested releases and was doing "well working the program at

Project Turnabout.” The county report noted that completing an ICPC to allow mother to move to Iowa might “take up to 45 days.” And the county report stated that mother had not yet completed a diagnostic assessment, but that the county was “going to reach out to get a date set up.” The county report recommended that R.X.L.F. be adjudicated CHIPS and that legal custody remain with the county.

Mother testified that she had completed parenting-education classes and the chemical-dependency assessment, and she was complying with its recommendations. Mother also testified that she had not completed the diagnostic assessment, but planned to complete it as soon as the county provided an appointment. And mother testified that she was currently in chemical-dependency treatment and was complying with all requirements of the treatment program, and had an anticipated release date of March 28, 2018. Mother also testified about the housing she had found in Iowa. Upon her release, mother planned to stay with her uncle until she received the ICPC approval. When asked how she would financially provide for R.X.L.F., mother testified that she planned to start applying for jobs and had obtained general assistance.

Miller stated that he recognized the “spectacular” progress mother had made and her efforts were “very much appreciated.” The district court said it would “take this matter under advisement,” but wanted to recognize “the progress [mother] made in treatment and . . . the dedication” mother had shown on the “road to recovery.” The district court stated that even if it adjudicated R.X.L.F. as CHIPS, this adjudication would not impact mother’s “progress in recovery and [her] ability to achieve a reunification.”

On March 26, 2018, the district court issued a written order stating that mother had complied with the following conditions: completed parenting-education classes; completed a chemical-use assessment and complying with its recommendations; abstained from use and/or possession of non-prescription drugs and submitted to random testing; and cooperated with the agency, guardian, and case plan. But the district court found that mother had not fulfilled two conditions: (a) she had not scheduled a diagnostic assessment, although the district court noted that mother's failure to complete a diagnostic assessment was "due to scheduling rather than any purposeful delay on her part," and (b) she had not obtained proper housing for herself and R.X.L.F. to ensure that all his basic needs would be met. The district court emphasized that it was particularly "concerned with the lack of proper housing," which was necessary to ensure the "needs of the child are met," pursuant to the stay of adjudication. The district court order provided that "the stay of adjudication [was] vacated" and R.X.L.F. "shall be adjudged in need of protection effective April 2, 2018," when the stay expired.

On April 2, 2018, mother moved to dismiss the CHIPS petition, arguing that she completed the diagnostic assessment after the March 20 review hearing, and she had obtained proper housing, was able to ensure that all of R.X.L.F.'s basic needs were met, and had received permission from her parole officer to move to Iowa. The GAL report opposed mother's motion, stating that, given mother's history, it was important that she "become established" in her "new community" before regaining custody of R.X.L.F. The GAL report also noted that mother's recent "staffing report" from Project Turnabout stated that mother had a "high risk of relapse," had "no coping skills" to address "mental health

or addiction illness or prevent relapse.” The GAL report stated that she had not yet seen the results from the diagnostic assessment. The county also submitted a report recommending that the district court deny mother’s motion.

The district court conducted a hearing on April 10, 2018. Miller testified that the county would like to see the services “in place,” rather than “simply . . . arranged for,” and would also like the ICPC “completed prior to reunifying” R.X.L.F. with mother. The district court stated that mother had made “very good progress,” but had not fully complied with the stay conditions before April 2. On April 10, 2018, the district court issued a written order denying mother’s motion and ordered that R.X.L.F. “shall remain in the custody of the [county] for placement in licensed foster care” and mother shall “comply in full with the existing case plan.” Mother appeals.

D E C I S I O N

I. The district court did not violate rule 40.02 when it adjudicated R.X.L.F. in need of protection or services.

The procedures for juvenile protection matters are governed by the Minnesota Rules of Juvenile Protection Procedure. *See In re Welfare of L.L.P.*, 836 N.W.2d 563, 569 (Minn. App. 2013). Under rule 40.02, when it is in the best interest of the child, a district court may withhold a CHIPS adjudication for up to 90 days “from the finding that the statutory grounds set forth in the petition have been proved.” Minn. R. Juv. Prot. P. 40.02, subd. 1. Rule 40.02 further provides:

At a hearing, which shall be held within ninety (90) days following the court’s withholding of adjudication, the court shall either:

- (a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or
- (b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance.

Minn. R. Juv. Prot. P. 40.02, subd. 2.

On appeal, mother challenges the district court's CHIPS adjudication because the court did not comply with rule 40.02. First, mother argues that the district court erred because it did not dismiss the matter or adjudicate the child as CHIPS "at a hearing." Second, mother argues that the district court erred in determining that the stay expired on April 2, 2018. Third, mother argues that, even if the stay expired on April 2, the CHIPS adjudication was still untimely. We discuss each of mother's objections in turn.

A. Failing to adjudicate CHIPS at the hearing

Mother argues that rule 40.02, subdivision 2, provides that the district court "shall" adjudicate or dismiss the matter at a hearing, and "shall" is mandatory. *See* Minn. Stat. § 645.44, subds. 1, 16 (2016) (stating that, for the purposes of statutes and legislative acts, "'Shall' is mandatory"). Accordingly, mother argues that the plain language of rule 40.02 requires that the district court hold a hearing within 90 days, and, at that hearing, either dismiss the matter or adjudicate CHIPS. Because the district court failed to adjudicate or dismiss at the March 20 review hearing, mother argues that this court must reverse the CHIPS adjudication. Respondent argues that, even if the district court failed to adjudicate at the hearing, reversal of the adjudication is not warranted because rule 40.02 does not provide a consequence for a court's failure to properly adjudicate. This issue requires the

court to interpret the Minnesota Rules of Juvenile Protection Procedure. This court interprets procedural rules de novo. *See Matter of Welfare of Child of R.K.*, 901 N.W.2d 156, 159 (Minn. 2017).

We agree with mother that the district court failed to comply with rule 40.02, subdivision 2's requirement to adjudicate or dismiss the CHIPS petition "at a hearing." The district court did not adjudicate or dismiss at the March 20 review hearing, but instead took the "matter under advisement." On March 26, 2018, the district court issued a written order concluding that "the stay of adjudication is vacated" and R.X.L.F. "shall be adjudged in need of protection effective April 2, 2018."

We conclude, however, that the district court's failure to comply with rule 40.02 does not warrant reversal.² Mother does not assert any prejudice arising from the district court's decision to adjudicate R.X.L.F. as CHIPS in a written order, rather than at the hearing. To prevail on appeal, an appellant must show both error and prejudice resulting from the error. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (1975)

² In support of her argument, mother points to an unpublished decision from this court, *In re Welfare of C.L.C.*, which stated that, "when the district court withholds adjudication after making a CHIPS finding it *must* either dismiss the matter or adjudicate the children as CHIPS *at a hearing* while the stay is in force." No. A16-1103, 2016 WL 7042112, *3-4 (Minn. App. Dec. 5, 2016) (emphasis added). Unpublished opinions are not precedent, but may be persuasive. *See* Minn. Stat. § 480A.08, subd. 3(c) (2016); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993) (stating that, while "of persuasive value," unpublished opinions "are not precedential"). We conclude that *C.L.C.* is distinguishable. In *C.L.C.*, the district court failed to adjudicate or dismiss the case at a hearing during the 90-day stay. 2016 WL 7042112, *3-4. But, in *C.L.C.*, the district court "overlooked" the adjudication issue entirely and did not issue an adjudication on the CHIPS issue until almost two months after the stay expired. *Id.* at. *4. Here, however, the district court adjudicated R.X.L.F. as CHIPS in a written order before the stay expired.

(stating that, absent prejudice, error is not ground for reversal); *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 98 (Minn. App. 2008) (applying harmless-error analysis in a juvenile protection appeal). Here, the district court adjudicated CHIPS before the 90-day stay expired. Additionally, the record shows that mother was aware of the written adjudication because she filed a motion to dismiss.

Because mother asserts no prejudice from the district court's decision to adjudicate in a written order, and the district court adjudicated R.X.L.F. as CHIPS before the stay expired, we conclude that the district court's failure to adjudicate or dismiss at the March 20 hearing does not warrant reversal of this CHIPS adjudication.

B. Finding that the stay expired on April 2, 2018

Mother argues that the district court erred by determining that the stay of adjudication expired on April 2, 2018. Under rule 40.02, subdivision 1, when it is in the best interest of the child, the district court may withhold a CHIPS adjudication for up to 90 days "from the finding that the statutory grounds set forth in the petition have been proved." Minn. R. Juv. Prot. P. 40.02, subd. 1. Mother asserts that the district court withheld adjudication at the admit/deny hearing on December 21, 2017. She argues, therefore, that the stay of adjudication expired on March 21, 2018, and the district court erred by finding that the stay expired on April 2, 2018. Respondents argue that the stay expired on April 2, because the stay was imposed on January 2, 2018, when the district court issued its order based on the December 21 admit/deny hearing.

We conclude that the stay commenced when the district court issued its order on January 2, 2018, for three reasons. First, at the December 21 hearing, the district court

found that mother's consent to the CHIPS finding was "voluntarily and intelligently given," and specifically stated that it intended to issue an order after the hearing. Also, the district court's statements during the hearing did not include the order to stay proceedings. Second, the district court's January 2 order included two notable differences from the stay conditions that the parties described at the December 21 hearing: (1) the district court added the requirement that mother cooperate with the agency, guardian, and the case plan; and (2) the district court revised the housing condition.³ Third, the district court did not determine that "the statutory grounds set forth in the petition have been proved" at the December 21 hearing; the court made this finding in its January 2 order. See Minn. R. Juv. Prot. P. 40.02, subd. 1. Accordingly, we conclude that the stay commenced on January 2 and expired on April 2, 2018.

C. Timing of the CHIPS adjudication

Mother argues that, even if the stay expired on April 2, this court should reverse because the CHIPS adjudication was untimely. The district court's March 26 order stated that, unless otherwise ordered, R.X.L.F. would be adjudicated CHIPS effective April 2,

³ At the December 21 hearing, mother's attorney outlined the housing condition as requiring mother to:

[O]btain proper housing for herself and the child and ensure that all of the child's basic needs can and will be met. [Mother] has provided the agency with a proposed home and so the agency will be responsible for checking the home and notifying [mother] promptly of any concerns with that home so that she may correct them or find alternate housing, and the agency will also follow up with [mother] to make sure that she has all of the supplies in place for [R.X.L.F.] after she is released from custody.

2018, when the stay expired. On April 2, mother moved to dismiss the petition based on her alleged compliance with the stay terms. The district court scheduled a hearing for April 10. Thus, mother argues, the district court did not adjudicate CHIPS until April 10, “outside of the 90-day timeframe.”

But, as conceded by mother, during the April 10 hearing, the district court stated that it had adjudicated R.X.L.F. as CHIPS on April 2. The district court also explained that mother had not complied with the terms “on or before April 2 when that agreement expired.” Because the district court did not issue a subsequent inconsistent order after March 26 and the order did not end pursuant to its terms, the March 26 order remained in full force and effect. *See* Minn. R. Juv. Prot. P. 10.01 (providing that a written order “shall remain in full force and effect pursuant to law or until the first occurrence of one of the following: (a) issuance of an inconsistent order; or (b) the order ends pursuant to the terms of the order”). In short, the district court’s decision to schedule a hearing on April 10 did not alter the effective date of the March 26 order. Thus, we conclude that the district court’s CHIPS adjudication was effective on April 2 and was timely.

II. The district court did not abuse its discretion in determining that mother failed to comply with the conditions of the stay.

Mother argues that the district court erred by determining that she failed to comply with the conditions of the stay of adjudication. The district court’s March 26 order determined that mother failed to comply with two conditions of the stay: (a) schedule a diagnostic assessment and make “satisfactory progress toward compliance with the

recommendations,” and (b) “obtain” proper housing for herself and R.X.L.F., and ensure all his basic needs are met.

On appeal, mother argues that the district court’s conclusion that she failed to comply with the conditions of the stay should be considered under the principles of contract law, and reviewed de novo, because this court is required to interpret the terms of the parties’ agreement. It is true that a settlement agreement is a contract. *See TNT Props., Ltd. v. Tri-Star Developers LLC*, 677 N.W.2d 94, 100-01 (Minn. App. 2004). But the parties did not enter into a settlement agreement in this case. Instead, the parties agreed on conditions, which were subject to the court’s approval, that the mother must comply with in order to satisfy the stay of adjudication. In fact, as stated above, the district court did not rubberstamp the parties’ proposed conditions, and included two changes from the proposed conditions in its order. Thus, as in other CHIPS proceedings, we conclude that the district court’s findings “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).

Mother initially argues that the district court erred in determining that she failed to complete the diagnostic assessment because “the agency had failed to schedule it for her,” and thus, that she was “relieved of her obligation to perform.” The district court noted in its decision that mother’s failure to complete a diagnostic assessment was “due to scheduling rather than any purposeful delay on her part.” Respondents concede on appeal that mother’s failure to complete the diagnostic assessment did “not reflect non-compliance” with the stay conditions. Accordingly, we do not consider mother’s failure to

complete the diagnostic assessment in determining whether mother complied with the stay conditions, and analyze only mother's failure to satisfy the housing condition.

Mother also argues that the district court erred in finding that she failed to "obtain" proper housing for herself and R.X.L.F. because, at the March 20 review hearing, she testified that she had signed a lease for a home in Iowa. Mother asserts that the district court misinterpreted the housing condition as requiring "[o]ccupancy of actual housing, rather than a plan for such housing, [to] 'ensure that all basic needs of the child are met.'"

We conclude that the district court did not err in determining that "[o]ccupancy of actual housing" was necessary to satisfy the condition that mother "obtain proper housing" and provide for R.X.L.F.'s basic needs. Mother acknowledges in her brief to this court that the "semantic range" of the verb "obtain" includes "the concept of occupy." Mother suggests, however, that the parties "could not possibly have intended" that mother occupy housing because she was in prison at the inception of the stay and that it would have been "impossible" for her to occupy housing within 90 days. But the CHIPS statute supports the district court's view because a CHIPS determination is appropriate when the child is without "shelter . . . because the child's parent, guardian, or custodian is unable or unwilling to provide that care." Minn. Stat. § 260C.007, subd. 6(3). We conclude that the district court did not err in concluding that "[o]ccupancy of actual housing, rather than a plan for such housing, is necessary to 'ensure that all basic needs of the child are met.'"

Finally, the stay condition specifically required that mother "ensure that all basic needs of [R.X.L.F.] are met" and that the county would follow-up with mother to "ensure proper housing and supplies are in place for [R.X.L.F.] upon [] [m]other's release from

custody.” The district court determined that, even if mother had obtained housing, she had not met the basic needs of R.X.L.F. nor had she allowed the county the opportunity to ensure that housing and supplies were in place, and complete a home study, before the stay expired. In fact, the record reflects that the agency in Iowa undertook a home study, but was not able to ensure “proper housing and supplies [were] in place,” until May 15, 2018, well beyond the expiration of the 90-day stay. In light of R.X.L.F.’s very young age, the record fully supports the district court’s finding that mother failed to comply with the housing condition.

Because the district court did not abuse its discretion in adjudicating R.X.L.F. as CHIPS and finding that it is in the child’s best interest to continue court supervision, we affirm. We echo the district court’s comments that mother has made remarkable progress and shown superior dedication. We also underscore the district court’s comments that this CHIPS adjudication should not negatively impact mother’s recovery or her ability to achieve reunification with R.X.L.F.

Affirmed.