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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0931**

In the Matter of the Welfare of the Child of: K. B. and T. B., Parents.

**Filed January 25, 2021
Affirmed
Larkin, Judge**

St. Louis County District Court
File No. 69DU-JV-19-858

K.B., Duluth, Minnesota (self-represented appellant)

Natasha M. VanLieshout, Duluth, Minnesota (for child M.B.)

Mark S. Rubin, St. Louis County Attorney, Korey W. Horn, Assistant County Attorney,
Duluth, Minnesota (for respondent St. Louis County Public Health and Human Services
Department)

Joan Mahle, Duluth, Minnesota (guardian ad litem)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant-mother challenges the district court's adjudication of her child as a child
in need of protection or services (CHIPS), arguing that the district court erred by denying
her pretrial notice to remove the assigned district court judge for actual bias and by denying

her petition for a writ of habeas corpus. She also argues that she was denied procedural and substantive due process. We affirm.

FACTS

Appellant K.B. is the mother of M.B. (child), born in 2006. On November 27, 2019, respondent St. Louis County Public Health and Human Services Department (county) filed a petition alleging that the child was in need of protection or services. The petition alleged four statutory grounds for a CHIPS finding, including that mother had physically abused the child. The district court held an emergency-protective-care hearing and awarded temporary custody of the child to the county. The child was placed with his maternal grandmother.

Mother was represented by private counsel at the initial district court hearings in this case. In January 2020, the district court granted private counsel's motion to withdraw after mother decided to discharge him. The district court later granted mother's request for court-appointed counsel. In April, the district court granted court-appointed counsel's request to withdraw and appointed new counsel for mother. In May, the newly appointed attorney and mother each filed a written request to discharge counsel, which the district court granted. As support, the attorney informed the district court that she had communicated with mother "numerous times each working day" but that mother was "not willing or able to take [her] legal advice." At a pretrial hearing on May 20, mother indicated that her attorney withdrew because mother "wouldn't do what [counsel] wanted [her] to do." Mother requested another court-appointed attorney, but the district court denied that request.

On May 27, 2020, mother filed a notice to remove the district court judge who had presided at the admit-deny hearing and pretrial hearings in the case and who was scheduled to preside at trial. Mother alleged that the judge was biased. The district court denied the request for removal as untimely. Mother also filed a document titled, “Petition for writ of Habeas Corpus and Emergency Motion to return my Child.” She claimed that the allegations against her were fabricated, accused the county and the attorneys of conspiring against her, and demanded the immediate return of the child.

A court trial was held remotely through Zoom on June 4, 2020.¹ At the beginning of the trial, the district court acknowledged mother’s habeas corpus petition and declined to consider it, explaining that the petition was procedurally and substantively improper.

At trial, the county introduced testimony from two social workers, a psychotherapist, a forensic interviewer, and the child’s guardian ad litem. Mother indicated that she would call the child as a witness, and the parties agreed that the child would testify during the county’s case-in-chief to accommodate the child’s schedule. The child was scheduled to testify after a one-hour lunch break during the trial. When the trial resumed after that break, mother did not appear, even though her video connection appeared to be working properly. After attempts to contact mother were unsuccessful, the district court excused the child from testifying. The county moved to proceed by default, the district court granted that request, and the county continued its presentation of evidence.

¹ Zoom is a video-conferencing service that enables individuals to meet and communicate remotely. Due to the COVID-19 pandemic, the Minnesota Supreme Court has ordered that all district court proceedings be held using remote technology if possible.

During the next witness's testimony, mother reappeared on the video, more than 20 minutes after the trial was scheduled to resume. According to the district court's posttrial findings, mother "appeared on screen with music playing in the background and did not seem to understand the severity of her absence." Instead, mother "made comments about her 'biceps being sore' and began stretching on video." The district court informed mother that it had released the child as her witness, and the county effectively withdrew its default motion and did not object to mother's participation in the proceeding.

The county entered numerous exhibits into evidence, including audio and video recordings of interviews with the child and his younger half-sister, M.C., born in 2010. The recordings were not played at trial. Instead, the county asked the district court to review them after submission of the case, and mother agreed with that proposal. The county also submitted transcripts of interviews and reports summarizing those interviews.

The evidence showed that in an April 2019 interview with the county, M.C. claimed that mother had beaten up the child and banged his head on a dresser. M.C. stated that the child had bruises, bite marks, and a bloody nose as a result of mother's actions. According to M.C., mother committed those acts often and for minor reasons. In a November 2019 forensic interview, M.C. described instances in which she observed or was told by the child about mother and the child fighting with each other. During one of those fights, which the child told M.C. about, mother repeatedly hit the child in the face with her forearm, giving the child a bloody nose. During other fights, which M.C. observed, mother bit the child's ear and struck his head against a dresser.

In a September 2019 interview with the county, the child described a physical altercation that occurred when he was arguing with mother about having games on his phone. The child said that mother “used to be a fighter” and “did some sort of take down” on him by grabbing his legs and knocking him to the ground, before punching him twice in the face. Photographs of the child’s injuries, taken during the interview, showed that the child had a broken blood vessel in one eye and a bruise around the other. The child indicated that mother had punched him on other occasions and that her blows had caused bruises on his arms.

In a September 2019 interview with the county, mother admitted that she had argued with the child about games on his phone. She also admitted that she knocked the child to the ground and struck him, but she claimed to have done so because the child was angry, had a knife, and had threatened to kill himself. At trial, mother testified and denied the physical-abuse allegations. She insisted that M.C.’s statements were lies and that the child was coerced into making the allegations against her.

On June 9, 2020, the district court issued an order adjudicating the child in need of protection or services under Minn. Stat. § 260C.007, subd. 6(2) (2018). The district court concluded that the county had established, by clear and convincing evidence, that the child was a victim of physical abuse. Mother appeals.²

² Before filing this appeal, mother moved for a new trial and requested a new judge and a court-appointed attorney. The district court denied mother’s requests on August 14, 2020, after mother filed the appeal. Mother does not challenge the denial of her posttrial motions on appeal.

DECISION

We begin with the principles that govern this appeal. Although some accommodations may be made for self-represented litigants like mother, they are generally held to the same standards as attorneys. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). “[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.” *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted). Mere assertions of error without supporting legal authority or argument are waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). In addition, “issues not adequately briefed are waived.” *Brooks v. State*, 897 N.W.2d 811, 819 (Minn. App. 2017), *review denied* (Minn. Aug. 8, 2017).

With those principles in mind, we turn to the issues raised in this appeal.

I.

Mother contends that the district court erred by denying her “[n]otice to remove” the trial judge, which was based on “an affirmative showing of actual bias, thus violating Minnesota [R]ules of Civil Procedure, and depriving [her] of substantive and procedural due process rights to a fair trial in front of an impartial judge.” “Due process requires . . . the right to an impartial decision-maker” *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). We review the denial of a notice to remove a district court judge for an abuse of discretion. *Matson v. Matson*, 638 N.W.2d 462, 469 (Minn. App. 2002).

A judge who has already presided at a proceeding may be removed only “upon an affirmative showing that the judge or judicial officer is disqualified under the Code of Judicial Conduct.” Minn. R. Civ. P. 63.03. Under the Minnesota Code of Judicial Conduct, a judge must disqualify herself “in any proceeding in which the judge’s impartiality might reasonably be questioned,” including when the judge “has a personal bias or prejudice concerning a party.” Minn. Code Jud. Conduct Rule 2.11(A)(1).

One week before trial, mother filed a notice to remove the district court judge for bias, which the district court denied as untimely. In arguing that the district court judge was biased, mother relies on statements that the judge made during the proceedings. For example, mother points to the following statement, which the judge made at a pretrial hearing when denying mother’s request for unsupervised visitation: “I guess, in a nutshell, you don’t end up in Child Protection Court because it’s just a few things going wrong. There’s very serious concerns, there’s very serious reasons this matter came before the Court.”

Mother’s reliance on such statements is unavailing because

[o]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.

Byers v. Comm’r of Revenue, 735 N.W.2d 671, 673 (Minn. 2007) (quoting *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994)). Our review of the record does

not reveal statements indicating a deep-seated favoritism or antagonism that made fair judgment impossible.

Mother also argues that the district court judge “assumed” that she had “committed child abuse, even without ever viewing the evidence in this case.” The district court’s order belies that contention. The county alleged four statutory grounds for a CHIPS finding. The district court concluded that the county did not prove three of those statutory grounds by clear and convincing evidence. The district court’s order explained its evaluation of each statutory ground, and its explanations were based on the evidence submitted at trial. Moreover, in concluding that the child was a victim of physical abuse, the district court noted that there were conflicting stories regarding how the child obtained the injuries around his eyes, and it therefore did not rely on that evidence.

In sum, we are satisfied that the district court’s CHIPS determination was based on the evidence presented at trial, and was not the result of deep-seated favoritism or antagonism that deprived mother of the right to a fair trial before an impartial tribunal.³ The district court judge was not biased and did not err by denying mother’s request for removal.

³ Mother also argues that “[w]hat held the most weight in [the judge’s] decision seemed to be, not the evidence or the testimony, but the negative emotions that were triggered when she looks at [mother], who is at least 20 years younger than [the judge].” Mother continues, “Girl on girl ageism is the new trend in discrimination.” Mother’s assertion is completely unsubstantiated and does not merit discussion.

II.

Mother contends that the district court erred by denying her petition for a writ of habeas corpus. “A person imprisoned or otherwise restrained of liberty . . . may apply for a writ of habeas corpus to obtain relief from imprisonment or restraint.” Minn. Stat. § 589.01 (2018). But neither mother nor the child was imprisoned or restrained of liberty. Mother does not cite, and we are not aware of, legal authority permitting a writ of habeas corpus to be used as a means of modifying a child-custody determination in a juvenile-protection case. Indeed, mother’s argument is based on the following policy argument: “[A] Habeas Corpus is an appropriate remedy for alienated mothers who have been beat up in court and are desperate for an extraordinary writ option for review of the conditions that oppress them.” Mother’s argument is unavailing because we are not a policymaking court, and we are obligated to follow the law. *See LaChapelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000) (“Because this court is limited in its function to correcting errors it cannot create public policy.”), *review denied* (Minn. May 16, 2000). In sum, mother’s request for a writ of habeas corpus was unsupported, and the district court properly denied it.

III.

Mother contends that the district court violated her rights to procedural and substantive due process in many ways. “The parent-child relationship is among the fundamental rights protected by the constitutional guarantees of due process.” *D.F.*, 752 N.W.2d at 97. “Due process requires reasonable notice, a timely opportunity for a hearing,

the right to counsel, the opportunity to present evidence, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record.” *Id.*

Mother asserts that she was denied the following procedural-due-process rights: (1) to be heard, (2) to present reasons why the proposed action should not be taken, (3) to present evidence and call witnesses, (4) to a decision based exclusively on the evidence presented, (5) to know opposing evidence, (6) to cross-examine opposing witnesses, (7) to be represented by counsel, and (8) to a public trial.

The record refutes mother’s assertion. As discussed in section I of this opinion, the district court’s decision was based on the evidence presented at trial. Moreover, the record indicates that the county disclosed its exhibits and witnesses to mother through counsel before trial. At trial, mother was not prevented from testifying, presenting evidence, calling witnesses, cross-examining opposing witnesses, or making arguments in support of her defense. Indeed, arrangements were made to facilitate the child’s appearance as mother’s witness. But mother did not appear for trial when the child was scheduled to testify as her witness, and the district court excused the child from testifying based on mother’s nonappearance.

Although the district court frequently limited mother’s attempts to speak during the trial, those limitations were in response to mother’s improper cross-examination questions and inappropriate remarks. For example, when cross-examining the psychotherapist, mother asked, “Do you think that [the county’s actions] might have f---ing ruined [the child’s] life?” And when testifying herself, mother suggested that one of the social workers was “sexually excited” by the “drama” and was suffering from a “mental illness.” The

district court appropriately limited such questions and comments, and the court did not violate mother's right to procedural due process in doing so. See Minn. R. Evid. 611(a) ("The court shall exercise reasonable control over the mode . . . of interrogating witnesses and presenting evidence so as to . . . protect witnesses from harassment or undue embarrassment.").

As to mother's assertion that she was denied the right to counsel, in juvenile-protection proceedings, there is no federal constitutional right to counsel. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 659 (Minn. App. 2018). When a parent desires counsel but cannot obtain it, the district court must appoint counsel "in any case in which it feels that such an appointment is appropriate." Minn. Stat. § 260C.163, subd. 3(c) (2018). We review the district court's decision whether to appoint counsel for an abuse of discretion. *A.M.C.*, 920 N.W.2d at 660. A district court abuses its discretion when its decision is "against logic and the facts of record." *Id.*

Here, mother initially retained private counsel, but she eventually discharged him. Subsequently, the district court appointed two different attorneys to represent mother, but the court discharged both of them after they asked to withdraw as counsel. The second court-appointed attorney asked to withdraw because mother was unwilling to take her legal advice, and mother herself requested discharge of that attorney. At the final pretrial hearing on May 20, 2020, mother appeared as a self-represented litigant and requested another court-appointed attorney. The district court denied that request. Given the circumstances, the district court's refusal to appoint another attorney on the eve of trial was not against logic or the facts of record.

As to mother's assertion that she was denied her right to a public trial, mother has not provided adequate support for this assertion of error. We discern no obvious prejudicial error and therefore deem that assertion waived. *See Modern Recycling, Inc.*, 558 N.W.2d at 772 (stating that unsupported assertions of error are waived unless prejudicial error is obvious on mere inspection).

Lastly, mother asserts that she was denied substantive due process. Mother acknowledges that she is not familiar with the relevant constitutional law or standards, and she does not apply them. Instead, she makes general arguments about corruption, ageism, and parental alienation. Mother's arguments do not provide a basis for relief. *See id.*

Affirmed.