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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1305**

In the Matter of the Welfare of the Child of C. L. S. and E. O. T., Parents.

**Filed June 1, 2021
Affirmed
Ross, Judge**

Olmsted County District Court
File No. 55-JV-19-7349

Michael Schatz, Schatz Law Firm, Rochester, Minnesota (for appellant mother)

Steven Murakami, Murakami Law Firm, LLC, Rochester, Minnesota (for respondent father)

Cathryn Middlebrook, Chief Appellate Public Attorney, St. Paul, Minnesota; and

Janet H. Krueger, Assistant Public Defender, Rochester, Minnesota (for child)

Kathryn M. Keena, Acting Olmsted County Attorney, Michelle A.S. Barnes, Associate County Attorney, Rochester, Minnesota (for respondent Olmsted County Health, Housing, and Human Services)

Jennifer Nguyen, Rochester, Minnesota (guardian ad litem)

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A mother under the influence of methamphetamine drove her car into a ditch in the middle of December, after which passersby found her wandering through a cornfield with

her nine-year-old daughter. After two more impaired-driving incidents, the district court determined the child to be in need of protection and adopted Olmsted County's case plan for mother to address her drug use. The district court later terminated mother's parental rights for her failing to comply with the plan. Mother appeals that decision, arguing that the district court admitted inadmissible hearsay evidence and that her trial counsel was ineffective. The record establishes that, even if the district court improperly admitted the evidence and the attorney performed ineffectively, mother has not established that either error prejudiced the termination decision. We therefore affirm.

FACTS

The Mower County sheriff's deputies went to a cornfield in the middle of December 2018 when passersby reported that a woman and her young daughter were wandering in a cornfield after their car crashed into a ditch. Deputies found C.L.S. (Mother) and her nine-year-old child A.T. (Daughter) and spoke with Mother. Mother said that she saw "antennas in the middle of the road" and "that there were lights chasing her, so she swerved" her car into the ditch. She got out of the car and walked with Daughter through the field. Mother was barefoot. Daughter lost her shoes also, and she began screaming for Mother to return to the car. Mother got upset with Daughter, covered Daughter's mouth and nose with her hand, and pushed Daughter to the ground. Mother held her there for minutes with her knee on Daughter's stomach.

Deputies took Mother and Daughter to the hospital, concerned about their mental and physical health. Daughter had lacerations on her mouth and skin redness—signs of overexposure to the cold. Mother remained hospitalized nine days because of frostbite and

an arm infection. Mother hallucinated after she ran off the road, seeing ghosts and demons, and she acknowledged methamphetamine use. The state charged Mother with child endangerment and domestic assault, and the county released Daughter to a relative.

Deputies in Winona County found Mother beside the road two months later after her car ran out of gas. Mother slurred her speech and said that she had used methamphetamine days earlier, and the deputies arrested her for impaired driving. Other deputies stopped her car a month later for erratic driving and again arrested her for methamphetamine-induced impaired driving. The district court determined Daughter to be a child in need of protection, and it adopted a case plan created by Olmsted County child-protection workers intended to address Mother's drug-related parenting deficiencies.

After five months of Mother's failure to comply with the case plan, Olmsted County petitioned the district court to terminate Mother's parental rights. The district court held a trial, where the county presented evidence of Mother's chronic drug use all of Daughter's life and the associated dangers to Daughter. The district court learned of Mother's failure to become sober, failure to provide Daughter a stable home environment, failure to be reachable by social workers, and failure to provide her whereabouts during the term of the case plan.

Mother objected to the admission of an affidavit sworn by the county's "court social worker." Mother asserted that the affidavit was inadmissible because the "court social worker" who signed the affidavit was not the primary social worker who provided the information in it, while the primary social worker did not testify at the trial. The district court overruled Mother's objection, citing a statute that permits a district court to consider

“any report or recommendation made by the responsible social services agency” when determining parental rights. Minn. Stat. § 260C.193, subd. 2 (2020).

Mother testified on her own behalf, conceding her prior drug abuse but insisting that she had become sober and that the county failed to provide her with enough resources to comply with the case plan. Mother’s attorney, who had unsuccessfully asked the district court for a continuance to prepare for the trial, gave his reason for not calling any other witnesses despite Mother’s desire that he do so:

So, Your Honor, I guess at this point my intention is only to call my client. I will say, you know, leading up in the last months and months, my client has gone to great length to give me witness names, and [] the best contact info she could, at least, however, given the short notice of the trial as well as my inability to find her for a short period of time, I have not subpoenaed nor noticed any of those witnesses. I will note, in meeting with my client this morning, I don’t think she was very happy about that and I don’t blame her, but at this point I only have my client listed.

The district court found Mother’s testimony not credible and terminated her parental rights on various statutory grounds and for failure to comply with her case plan. *See* Minn. Stat. § 260C.301, subd. 1(b)(2) (2020). Mother appeals.

DECISION

Mother challenges the district court’s termination of her parental rights on two theories. She contends that the district court should not have allowed the social worker’s affidavit. And she contends that her trial counsel was ineffective for not calling witnesses. Both arguments fail for lack of any showing of prejudice.

Regarding the affidavit, the district court has broad discretion to admit evidence, and we will not reverse its decision absent an abuse of that discretion and a showing of unfair prejudice. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997). Assuming without deciding that the affidavit constituted hearsay, we are sure that its substance did not prejudice Mother’s case and that its admission is therefore at most harmless error. *See In re Welfare of S.R.A.*, 527 N.W.2d 835, 838 (Minn. App. 1995) (concluding that any error in admission of challenged evidence was harmless because it was cumulative to other evidence and therefore not prejudicial), *review denied* (Minn. Mar. 29, 1995). The affidavit includes testimony that merely duplicates other evidence properly admitted. It outlines the efforts Mother’s primary social worker took to maintain contact with Mother and provide resources to fulfill the case plan. It also declares Daughter’s wish to remain with her foster family but maintain contact with Mother. The trial witnesses, including a different social worker and Daughter’s guardian ad litem, testified essentially to these same things. Excluding the affidavit would not have weakened the county’s overwhelming evidence of the facts supporting termination.

Regarding Mother’s disappointment with her trial counsel’s alleged ineffective assistance, we will reverse only if Mother establishes that her lawyer’s representation fell below an objective standard of reasonableness and that a reasonable probability exists that, but for the lawyer’s poor performance, the proceeding would have resulted differently. *In re Welfare of L.B.*, 404 N.W.2d 341, 345 (Minn. App. 1987) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984)). Assuming without deciding that the attorney’s failure to call witnesses whom Mother wanted to call constitutes representation

below an objective standard of reasonableness, we will not reverse on that ground here. Mother has not even asserted that (let alone attempted to explain how) the result would have been different but for the allegedly poor performance. She does not suggest what any witness would have said to cast doubt on the district court's overwhelmingly supported finding that Mother failed to comply with her case plan and that terminating her parental rights serves Daughter's best interests.

Affirmed.