This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0270

In the Matter of the Welfare of the Children of:
J. C. H. and C. T. S., Parents.

Filed September 5, 2023
Affirmed
Reyes, Judge

Clay County District Court
File No. 14-JV-22-3496

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Samantha F. Zimmerman, Clay County Public Defender, Moorhead, Minnesota (for child M.H.)

Considered and decided by Reyes, Presiding Judge; Tracy M. Smith, Judge; and John Smith, Judge.*

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

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from a child-in-need-of-protection-or-services (CHIPS) proceeding, mother argues that the district court (1) abused its discretion by admitting hearsay; (2) made several clearly erroneous findings of fact; and (3) erred by adjudicating the child as CHIPS. We affirm.

FACTS

Appellant mother J.C.H. has three children: K.H. (born in 2007), M.H., and A.H. In October or November 2021, mother and the children experienced homelessness after mother did not renew her apartment lease and had difficulty in finding safe and adequate housing. At the time of trial, mother resided with M.H. and A.H. in a shelter in Pennington County.

The Clay County Social Services (the county) had received several reports regarding the family between 2019 and 2022, alleging that mother homeschooled the children without appropriate curriculum materials or any instruction, and that K.H. was recommended mental-health services but mother was not getting K.H. to appointments and refused to provide K.H. with medications. Clay County Child Protection Special Investigator J.W. investigated these reports. On September 29, 2022, the county filed a CHIPS petition and requested immediate placements for all three children.

This appeal relates only to K.H., who has been living with mother's sister (aunt) and uncle since February 2022. Prior to living with her aunt and uncle, K.H. had been running

away from home, and mother was scheduled for surgery. Aunt agreed to provide care for K.H. while mother underwent surgery and recuperated.

K.H. experienced traumatic incidents in 2020 and 2021. A doctor subsequently diagnosed K.H. with anxiety and depression and recommended that K.H. attend weekly therapy for trauma. Mother drove K.H. to those appointments at the beginning but then stopped. The doctor also prescribed K.H. medication for her mental health. Mother testified that K.H. took the medication on an "as needed" basis, but K.H. discontinued it when K.H. did not believe that it was helpful. K.H. had been hospitalized multiple times after she exhibited self-harming behaviors and received both inpatient and outpatient treatment. While receiving inpatient care, a doctor prescribed K.H. another medication to address her mental health. However, when the hospital discharged K.H., mother did not allow K.H. to continue taking the medication, so the doctor's office never sent the prescription out to a pharmacy to be filled. During trial, mother testified that she was a former emergency medical technician (EMT) and that she "knew that [the doctor's] recommendation was incorrect because [she] had been reading [K.H.'s] diagnosis."

Shortly before the children's removal from the home, mother met with the county to screen K.H. for possible residential-treatment options, and mother specifically requested that K.H. receive residential treatment at a certain residential treatment center. The county informed mother that other less-restrictive options, such as medication management, individual therapy, and family therapy must be exhausted before K.H. could be placed in residential treatment.

The district court held a court trial on January 20 and 27, 2023. In a February 10, 2023, order, the district court found that the county proved that mother was "unwilling to follow through with appropriate services for [K.H.]'s mental health" and "unwilling to provide the necessary care for [K.H]'s mental health needs." Accordingly, the district court adjudicated K.H. as CHIPS under Minn. Stat. § 260C.007, subd. 6(3), (8) (2022). In the same order, the district court dismissed the CHIPS petition regarding A.H. and M.H.

In February 2023, mother filed a motion for a new trial, arguing that the district court relied on inadmissible hearsay from J.W. The district court denied the motion. This appeal follows.

DECISION

I. Any alleged error by the district court admitting J.W.'s testimony as an opposing-party statement did not prejudice mother.

Mother argues that the district court erred by admitting specific hearsay testimony from J.W. as a statement by a party-opponent. We conclude that any alleged error did not prejudice mother.

We review a district court's evidentiary rulings for an abuse of discretion. *In re Welfare of Child of J.K.T.*, 814 N.W.2d. 76, 93 (Minn. App. 2012). "A district court abuses its discretion if it improperly applies the law." *Id.* We may grant a new trial "on the basis of an improper evidentiary ruling only if appellant demonstrates prejudicial error." *Id.* However, "[a]n evidentiary error is not prejudicial if the record contains other evidence that is sufficient to support the findings." *Id.* (Minn. App. 2012).

Except as otherwise provided by statute or the rules of juvenile-protection procedure, "the court shall only admit evidence that would be admissible in a civil trial pursuant to the Minnesota Rules of Evidence." Minn. R. Juv. Prot. P. 3.02, subd. 1. Here, neither party asserts that the challenged statement was admissible under the statute or the rules of juvenile-protection procedure. Under the Minnesota Rules of Evidence, an out-of-court statement offered to prove the truth of the matter asserted is generally inadmissible hearsay. Minn. R. Evid. 801 1989 comm. cmt. However, a statement is not hearsay if it is offered against a party and it is the party's own statement. Minn. R. Evid. 801(d)(2).

At trial, J.W. testified to the following:

> Q: Would it take work from [mother] . . . to ensure that [K.H.] was going to therapy and taking her medication?
> A: Yes.
> Q: And [mother] was not willing to do that?
> A: As – as far [as] my understanding, [mother] doesn't want medication management.

Mother objected on hearsay and speculation grounds. The district court overruled mother's objection and admitted J.W.'s statement as a statement by an opposing party under rule 801(d)(2). Mother argues that rule 801(d)(2) does not apply "[b]ecause the testimony offered was not a 'statement,'" so "it cannot be admitted as a 'statement by a party opponent.'"

Even if we assume without deciding that the district court should not have admitted J.W.'s statement under rule 801(d)(2), the alleged error did not prejudice mother. Mother herself testified that she did not follow the doctor's recommendation for K.H.'s medications because she "had been reading [K.H.]'s diagnosis" and "knew that

recommendation was incorrect." Moreover, in its order denying mother's motion for a new trial, the district court made clear that "[t]he findings made by the Court regarding [mother]'s resistance [to medication management] were taken directly from [mother]'s own testimony." Because other evidence in the record supports that mother opposed medication management and wanted residential treatment for K.H. instead, mother cannot show prejudice.[1]

II. The district court's findings of fact are not clearly erroneous except for finding number 12.

Mother argues that the district court made clearly erroneous findings regarding findings 11, 12, 15, 27, and 28. We are not persuaded except for finding number 12.

On appeal from a district court's CHIPS determination, "we review the [district] court's factual findings for clear error." *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015); *see In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (discussing, in detail, clear-error standard appellate courts use to review district court's findings of fact); *see In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* on appeal from juvenile-protection order), *rev. denied* (Minn. Dec. 6, 2021). "[B]ecause a district court is

[1] In her motion for a new trial, mother broadly asserted that "[t]he evidence presented to the [district court] in this case was almost entirely inadmissible hearsay." On appeal, however, mother only provides legal analysis challenging the admission of J.W.'s testimony that it was J.W.'s understanding that mother did not want medication management. Other evidentiary challenges that mother alludes to but fails to brief adequately are therefore waived. *See State Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed question); *In re Child of P.T.*, 657 N.W.2d 577, 586 n.1 (Minn. App. 2003) (applying *Wintz* in an appeal regarding termination of parental rights), *rev. denied* (Minn. Apr. 15, 2003).

in a superior position to assess the credibility of witnesses," we give considerable deference to its decision. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). "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). We will not set aside individual factual findings by the district court "unless the review of the entire record leaves [us] with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted).

The district court found in finding number 11 that mother did not consistently get K.H. to therapy appointments. Mother testified at trial that she drove K.H. to these appointments at first, and that she later stopped driving K.H. to her appointments because aunt "made it impossible for [mother] to pick [K.H.] up." As a result, the finding is supported by the record and is not clearly erroneous.

The district court found in finding number 12 that K.H.'s "medications were on an 'as needed' basis" and that mother "discontinued them when she did not believe [K.H.] was benefiting from them." At trial, mother testified that K.H. discontinued her "as needed" medications herself after she "felt it didn't do anything for her." The record does not contain K.H.'s medical records, and nothing in the record supports that mother—as opposed to K.H.—discontinued K.H.'s as-needed medication. We conclude that finding number 12 is clearly erroneous because it lacks evidentiary support. However, because substantial evidence supports all the other findings, and because those findings are sufficient to support the district court's resolution of the case, this error is harmless. *See Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979) (explaining that clearly

erroneous finding does not require new trial when other findings of fact, which are decisive of the case, are supported by the record); *see also State ex rel. Ford v. Schnell*, 933 N.W.2d 393, 407 (Minn. 2019) (concluding that an erroneous finding was harmless).

The district court found in finding number 15 that mother "appears to believe that because she was an EMT, she has greater knowledge and understanding of how to treat [K.H.]'s mental health than the professionals working with [K.H.]" This finding is supported by mother's own testimony that she did not follow the doctor's recommendation because she "had been reading [K.H.]'s diagnosis" and "knew that recommendation was incorrect." When asked if she was a doctor, mother responded that she was a former EMT.

The district court also found in finding number 15 that mother failed to ensure that K.H. attended individual therapy consistently. This finding is also supported by mother's testimony that she stopped driving K.H. to therapy because of alleged conduct by mother's sister.

The district court found in finding number 27 that mother was "unwilling to follow through with appropriate services for [K.H.]'s mental health" and "was unable to manage [K.H.]'s behaviors in the home, so she voluntarily chose to have [K.H.] live with a relative, but then refused to allow them to obtain services for [K.H.]." The record shows that J.W. had informed mother that K.H. must exhaust other less-restrictive treatments such as individual therapy, family therapy, and medicine management, before she could be placed at an inpatient treatment facility. However, mother refused to follow the doctor's medication recommendations for K.H. and insisted that K.H. should be placed in a residential facility instead. The evidence therefore supports the district court's finding.

Finally, the district court found in finding number 28 that mother was "unwilling to provide the necessary care for [K.H.]'s mental health needs, including failing to consistently get her to her therapy appointments and refusing any medications for [K.H.] outside a residential treatment center." The same evidence that supports finding number 27 also supports that the district court did not make clearly erroneous finding as to finding number 28.

In sum, we conclude that the district court's findings 11, 15, 27, and 28 are not clearly erroneous and the clear error regarding finding number 12 is harmless.

III. The district court did not abuse its discretion by adjudicating K.H. as CHIPS.

Mother asserts that the district court abused its discretion by adjudicating K.H. as CHIPS under section 260C.007, subdivisions 6(3), (8). We are not persuaded.

Section 260C.007, subdivision 6, requires proof that one of the enumerated child-protection grounds exists and that the subject child needs protection or services as a result. We review a district court's determination that a statutory basis exists to adjudicate a child CHIPS for an abuse of discretion. *D.L.D.*, 865 N.W.2d at 321. This review involves an inquiry into the sufficiency of the evidence, but requires deference "to the district court, which is in a superior position to assess the credibility of witnesses." *In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 873 (Minn. 2021) (quotation omitted).

Section 260C.007, subdivision 6(3), defines a child as CHIPS 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*.

(Emphasis added.)

Here, the record shows that K.H. suffers from depression and anxiety and has exhibited suicidal ideation. Despite K.H.'s need for consistent mental-health treatment, mother has actively obstructed K.H.'s treatment and demonstrated a clear inability or unwillingness to provide K.H. the care that she needed. The district court therefore did not abuse its discretion by determining that section 260C.007, subdivision 6(3), is met. Because we affirm the district court's CHIPS adjudication on this ground, we need not address mother's argument regarding section 260C.007, subdivision 6(8).

Affirmed.