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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1213**

In the Matter of the Welfare of the
Children of: R. K. and B. K., Parents

**Filed December 12, 2011
Affirmed
Minge, Judge**

Kandiyohi County District Court
File No. 34-JV-11-81

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Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges the district court's conclusion that his children were in need of protection or services, arguing that the district court erroneously allowed various hearsay statements to be entered into evidence and that those statements prejudiced the district court's decision. Because the record contains substantial evidence of abuse and

neglect beyond the challenged hearsay statements and there is no indication that those statements had a prejudicial effect, we affirm.

FACTS

Appellant-father B.K. and mother R.K. have seven children between the ages of three and eleven. In March 2011, Kandiyohi County Family Services (KCFS) received a child-protection report alleging that father had assaulted mother in the presence of the children, was involved in the trafficking of women, had forced his children into a well on his property for up to two days at a time, had thrown a child against a wall, had kicked a child in the stomach, had homemade bombs in his residence, had threatened to kill and/or sell the children, had killed the family's animals while the children watched, and had forced mother to have sexual relations with him. KCFS immediately filed a child-in-need-of-protection-or-services (CHIPS) petition, and mother and the children were accepted for emergency-protective care at a domestic-violence shelter. Mother subsequently admitted that the allegations in the CHIPS petition were true, but father denied them.

At the CHIPS-petition hearing, two social workers, an in-home counselor for the children, and the children's guardian ad litem testified. They recounted that the children told them that father hit them with a belt, physically abused mother in their presence, and withheld food and water from them as punishment. Neither the children nor mother testified. Father admitted to his involvement in several incidents of domestic assault, two of which involved firearms, but he blamed the incidents on mother. Father testified that he had never struck the children, was not involved in human trafficking, and had not

harmed the family's animals in the presence of the children. In addition, father admitted that his children needed protection or services, but he alleged that they needed protection from mother, who he believes is coaching or brainwashing the children to fear him.

The district court found that father's testimony lacked credibility and that his "portrayal of the facts was so one-sided and self-serving that the Court finds much of it to be incredible." Further, the district court found that the testimonies of the state's witnesses were "credible, balanced, and compelling." The district court determined that the state had produced clear and convincing evidence that the children were in need of protection or services, specifically finding that the children were victims of physical abuse, resided with victims of child abuse, resided with a perpetrator of domestic child abuse, and were victims of emotional maltreatment; were without proper parental care because of the immaturity of their parents; and were children whose behavior, condition, or environment was such as to be injurious or dangerous to them and others. Father moved for amended findings and a new trial, which the district court denied. This appeal follows.

DECISION

The issue before us on appeal is whether the district court committed reversible error by admitting various hearsay statements of the children. Generally, the district court may admit evidence in a CHIPS proceeding only if it would be admissible in a civil trial. Minn. R. Juv. Prot. P. 3.02, subd. 1. However, the district court may admit out-of-court statements by children under ten years of age if they describe acts of sexual penetration or contact, physical abuse, or neglect of that child, or such acts on another

child and witnessed by the reporting child; provided that the district court finds “sufficient indicia of reliability” and the other parties are properly notified of the intent to offer the statement. *Id.*, subd. 2; Minn. Stat. § 260C.165 (2010). Absent an erroneous interpretation of the law, the district court is afforded broad discretion in determining whether to admit or exclude evidence. *In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003).

An evidentiary error requires reversal only if the objecting party can show that the error prejudiced that party. *In re Welfare of J.B.*, 698 N.W.2d 160, 172 (Minn. App. 2005). “An evidentiary error is prejudicial if it might reasonably have influenced the jury and changed the result of the trial.” *W.G.O. ex rel. Guardian of A.W.O. v. Crandall*, 640 N.W.2d 344, 349 (Minn. 2002). “On the other hand, erroneous admission of evidence which is cumulative and corroborated by other competent evidence will be deemed harmless and will not warrant a new trial.” *Id.* Moreover, “[w]e have confidence in the ability of a court in a trial without a jury to be objective and to disregard evidence improperly admitted” and will not reverse a bench-trial decision when there is “other evidence supporting the judgment and indicating that the inadmissible evidence was not a material factor in the court’s decision.” *Chris/Rob Realty v. Chrysler Realty Corp.*, 260 N.W.2d 456, 459 (Minn. 1977).

Here, father challenges the admission of the following hearsay: one child’s statements to a social worker that her grandfather had exposed himself to her in the shower and statements to the in-home counselor that father showed her pornographic films, called her ugly and stupid, harmed animals in her presence, and threatened to harm

her in a similar manner; another child's statement to the in-home counselor that he wanted to commit suicide to escape memories of his father holding a gun to that child's head; and the statements of the children to a social worker that they had witnessed domestic violence between father and mother. Specifically, he argues that the statements are not within the scope of the statutory-hearsay exception, that they do not provide sufficient indicia of reliability so as to be admissible, and that the large volume of erroneously admitted statements "rendered the CHIPS trial fundamentally unfair."

The state argues that, even if the statements were erroneously admitted by the district court, their admission was harmless.¹ The state contends that the unchallenged evidence in the record is sufficient proof that the children are in need of protection or services. For instance, despite deflecting blame, father admitted to several incidents of domestic violence with mother that occurred while the children were present, including at least two involving firearms and at least one that left mother's face bruised. The record also indicates that father has a history of instability in his employment and living situation. He admitted to leaving mother and the children in Minnesota in June 2009, traveling to Texas and not returning to Minnesota for seven months. Because mother left the state during this period, father had no contact with the children until March 2010, when mother returned to Minnesota.

¹ At oral argument, the state argued for the first time that the challenged statements were within the scope of the exception. The state may be correct in that some of the statements could be construed as neglect or physical abuse under Minn. Stat. § 626.556, subd. 2(f), (g) (2010). However, because we conclude that any error was harmless, we do not further address the issue.

Furthermore, there is a significant amount of unchallenged testimony describing father's physical abuse and neglect of the children. The in-home counselor testified that one child "stated that she has been hit" and "has referred to dad using a belt on her," and that the children reported that "in times past when dad was angry he wouldn't give them any food to eat and he would cut off electricity." A social worker testified that one child, when asked how her father disciplined her, "held out . . . a belt, . . . describ[ing] how dad would fold . . . and . . . hold the . . . end with the belt—or the buckle . . . and then he would hit her with that belt." The social worker testified that the child, when asked to identify where she was struck with the belt, "would talk about the butt and the, the waist and she was able to point to those places and talk about that, that happening . . . [a]nd . . . about getting bruises from those, those times that he would hit with the belt." In addition, she testified that the child reported being pushed to the ground during a domestic assault between father and mother and sustaining an injury to her back, and that another child "talked about getting whacked and then he said that that was a spanking with the belt."

Finally, observations of the children's behavior and state of mind corroborate the testimony. The children reported feeling safe when with mother and unsafe when with father. Testimony from a social worker indicated that the oldest child "has been very violent at times, throwing [the other children] up against a wall. In one instance choking one of them." Another child tried to fill his backpack with rocks and then wear it during a bath so as to commit suicide. The oldest female child displayed low self-esteem and sometimes refused to bathe and attend school. Several children carried their backpacks stuffed with food, water, and other personal items with them at all times, and observers

indicated that the younger children “play out acts of violence” and “talk about hitting very casually as though that’s just a normal part of their interaction.”

Excluding the challenged statements, the evidence described above is sufficient to support a finding that the children were either victims of physical abuse and emotional maltreatment or resided with a victim of such abuse. Although father disputed the children’s reports, the district court explicitly found his testimony not credible. Moreover, much of the challenged testimony involved the children’s reports of domestic abuse between father and mother. Because father admitted to such acts, those hearsay statements of the children were corroborative of father’s admission. The challenged statements that remain, primarily regarding the grandfather, pornography, father’s name-calling, and the harming of the family’s animals, were not essential to and did not have a prejudicial effect on the district court’s decision.

In making its CHIPS determination, the district court relied on the reports of physical abuse and neglect, including father’s abandonment of the family, his admission that incidents of domestic violence occurred between him and mother while the children were present, and the children’s reports that father struck them with a belt and withheld food and water when angry. Therefore, we conclude that, even if the challenged statements were erroneously admitted by the district court, any such error was harmless.

Affirmed.

Dated: