This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).

STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0103

In the Matter of the Welfare of the Child of:
T. D. G., Parent.

Filed June 24, 2013
Affirmed
Halbrooks, Judge

Chisago County District Court
File No. 13-JV-11-349

Janet Reiter, Chisago County Attorney, Anne M. Zimmerman, Assistant County Attorney, Center City, Minnesota (for appellant Chisago County)

Jodi Proulx, Hugo, Minnesota (for respondent T.D.G.)

Alfred S. Alliegro, Johnson, Grundhoefer & Alliegro, Center City, Minnesota (for respondent M.G.J.)

Timothy T. Ryan, Chisago City, Minnesota (for respondents C.P. and K.V.)

Linda Van Der Werf, Chisago City, Minnesota (guardian ad litem)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the juvenile court's determination that it has jurisdiction to rule on motions to change custody and venue. Because the juvenile court properly exercised its jurisdiction, we affirm.

FACTS

In October 2011, appellant Chisago County filed a child in need of protection or services (CHIPS) petition concerning M.W.J., who was born on March 2, 2011. M.W.J.'s mother, T.D.G., denied the allegations in the petition, and the matter was set for trial.

In December 2011, T.D.G., her maternal aunt, C.P., M.W.J.'s biological father, M.G.J., the county, and the guardian ad litem (GAL) drafted a stipulation for joint custody and dismissal. The parties agreed that it was in M.W.J.'s best interests for T.D.G., maternal aunt, and maternal aunt's husband, K.V., to have joint legal and physical custody of M.W.J. The stipulation provided that T.D.G. and M.W.J. would move to Texas to live with maternal aunt and K.V.'s family. The parties also agreed that a family court file would be opened in Chisago County, allowing the family court to exercise ongoing jurisdiction over the matter.

A hearing on the stipulation was held on December 13, 2011. At the conclusion of the hearing, the juvenile court stated, "[I]t's my understanding that once this is in place[,] . . . the CHIPS Petition is going to be dismissed[.]" The county responded, "Correct[.] [O]nce we know the parties have left [for Texas] we will be filing a paper for dismissal." T.D.G. confirmed that she agreed to the stipulation and that it was her understanding that the CHIPS petition would be dismissed. The juvenile court subsequently signed the stipulation and directed court administration to open a family court file.

In January 2012, the juvenile court filed an order concluding that the stipulated-custody arrangement was in M.W.J.'s best interests. The order does not adjudicate

M.W.J. as a CHIPS and does not close the juvenile court file. The county concedes that it never moved to dismiss the CHIPS petition. But a family court file was opened.

At some point after T.D.G. and M.W.J. moved to Texas, the arrangement deteriorated. T.D.G. left maternal aunt and K.V.'s home and moved into her own apartment with M.W.J. In August 2012, Texas child protection services (CPS) visited T.D.G.'s residence, opened a case against T.D.G., and placed M.W.J. with maternal aunt's family. Maternal aunt determined that she no longer wished to be a part of the custodial arrangement. In October 2012, maternal aunt moved the family court to grant sole legal and physical custody of M.W.J. to T.D.G.'s maternal uncle and his fiancée, who live in Washington state. Maternal aunt also sought a change of venue to Washington, where M.W.J. was then living with the maternal uncle. By that time, T.D.G. had returned to Minnesota on her own.

T.D.G. and father moved the Chisago County family court for joint legal and physical custody of M.W.J. and a change of venue to Ramsey County. T.D.G. and father disagreed with maternal aunt's assertion that maternal uncle and fiancée would be suitable custodians. T.D.G. indicated that she now resides in Minnesota and had not seen M.W.J. in more than two months.

A hearing before Judge Robert Rancourt in Chisago County District Court occurred on October 22, 2012. Judge Rancourt ordered that venue remain in Chisago County, appointed a GAL to represent M.W.J., reserved the parties' motions, and ordered that the matter be reassigned to Judge John McBride in accordance with the order for joint custody.

Following a hearing on December 17, 2012, Judge McBride found that the maternal aunt and K.V. had caused the custody transfer to collapse in less than one year and that, as a result, M.W.J. was essentially abandoned. Judge McBride concluded that the matter presented was one of modification of the juvenile court's order of transfer of permanent legal and physical custody that must be addressed in juvenile court. Because maternal aunt and K.V. had unilaterally relinquished custody of M.W.J. to a non-party without seeking a modification, Judge McBride ordered that M.W.J. be placed in the temporary custody of Chisago County Health and Human Services, pending an evidentiary hearing on the motions.

The subsequent hearing before Judge McBride in juvenile court occurred on January 4, 2013. The juvenile court found that, based on the submissions to the court, a prima facie showing was established that M.W.J. is a child in need of protection and services subject to a juvenile-court proceeding. The juvenile court determined that M.W.J.'s health and safety would be endangered if she were to be returned to the care of her legal custodians based on evidence that T.D.G. had had a relapse in her chemical-dependency issues and that maternal aunt and K.V. had relinquished custody.

The juvenile court concluded that the stipulation was a permanency placement disposition because "[i]t satisfied the provisions for an appropriate permanent placement option that was available under Minn. Stat. § 260C.201, subd. 11 (2011) and Minn. R. Juv. Protection Proc. 42.07 (2011) at the time of its issuance." Therefore, the juvenile court determined that it retained jurisdiction because the legislature "rewrote [the permanency statutes]" and the 2012 "statutes do not provide that a family court

proceeding is to be opened." The juvenile court concluded that "the circumstances present a modification of the permanent legal and physical custody order, which must be addressed in the juvenile court proceeding pursuant to Minn. Stat. §§ 260C.519 and 260C.521, subd. 2 (2012)." This appeal follows.

D E C I S I O N

I.

The county challenges the juvenile court's January 9, 2013 order on the ground that the juvenile court lacked jurisdiction. The county contends that the juvenile court mischaracterized the original custody arrangement as a permanency disposition, improperly applied statutes retroactively, erred by retaining jurisdiction, and failed to consider the best interests of M.W.J. We review de novo the question of whether a court has jurisdiction. *In re Welfare of Children of R.A.J.*, 769 N.W.2d 297, 302 (Minn. App. 2009).

"Permanency placement disposition" is not defined by statute or rule, but the relevant statutes and rules illustrate the process for making a permanency placement disposition. Minn. Stat. § 260C.201, subd. 11 (2010),[1] requires a district court to commence proceedings to determine a child's "permanent status" no later than 12 months after a child is placed in foster care or in the care of a noncustodial parent. If the child is less than eight years old at the time the CHIPS petition is filed, the district court must set a "permanency hearing" within six months of being placed out of the home. Minn. Stat.

[1] Subdivision 11 was repealed in 2012. Because the stipulated-custody arrangement at issue here was made in 2011, the 2010 version of the statute applies.

§ 260C.201, subd. 11a(a); *see also* Minn. Stat. § 260C.204(a) (2012) (setting forth the same, but requiring the six-month hearing to apply to all children). Following the permanency hearing, if the district court orders the responsible social services agency to develop a plan for the transfer of permanent legal and physical custody of the child to a relative, a petition supporting the plan is filed with the court and a trial on the petition is held. Minn. Stat. § 260C.201, subd. 11a(d)(2); Minn. R. Juv. Prot. P. 42.03(c)(2); *see also* Minn. Stat. §§ 260C.505, .509 (2012) (requiring the same). At the conclusion of permanent-placement-determination proceedings, the district court must make findings and order a permanency disposition, such as returning the child to his home, transferring permanent legal and physical custody to a relative, terminating parental rights, creating a guardianship with the commissioner of human services, or placing the child in foster care. Minn. Stat. § 260C.201, subd. 11(c), (d); Minn. R. Juv. Prot. P. 42.05; *see also* Minn. Stat. §§ 260C.513, .515 (2012) (setting forth the same).

Although it appears from the record that the parties and the juvenile court intended the stipulated-custody arrangement to be permanent, the order did not specifically address the elements of Minn. Stat. § 260C.201, subd. 11. The juvenile court did not set a date for a permanency hearing, request Chisago County social services to file a petition to transfer permanent legal and physical custody of M.W.J., or hold a permanency trial. Moreover, the stipulated-custody agreement states that T.D.G., maternal aunt, and K.V. "have joint legal and physical custody" of M.W.J., which is neither a return of M.W.J. to T.D.G. nor a transfer of permanent legal and physical custody to her relatives. Because the district court erred in concluding that the stipulated-custody arrangement was a

permanency-placement disposition—as that term is used in the applicable statutes and rules—we do not address the county's argument that the juvenile court improperly retroactively applied the 2012 changes to the statutes.

But even though the juvenile court erred by characterizing the stipulated-custody arrangement as a permanency-placement disposition, "we will not reverse a correct decision simply because it is based on incorrect reasons." *Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987).

Minn. Stat. § 260B.193, subd. 5(a) (2012), addresses the district court's jurisdiction in a child-protection case. The statute provides:

> The court may dismiss the petition or otherwise terminate its jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court, and except as otherwise provided in this subdivision, the jurisdiction of the court shall continue until the individual becomes 19 years of age if the court determines it is in the best interest of the individual to do so.

In *In re Welfare of Child of L.M.L.*, the GAL filed a CHIPS petition concerning the welfare of a 17-year-old child. 730 N.W.2d 316, 318 (Minn. App. 2007). The parents admitted the allegations in the petition, but the child denied. *Id.* After his eighteenth birthday, the child moved to dismiss the CHIPS petition, arguing that the district court no longer had jurisdiction over him because he had reached the age of majority. *Id.* The child argued that Minn. Stat. § 206C.193, subd. 6 (2006), did not apply because extending jurisdiction beyond his eighteenth birthday would only be permitted if he had been adjudicated CHIPS before his eighteenth birthday. *Id.* at 320. The child noted that the title of section 206C.193 is "DISPOSITIONS; GENERAL PROVISIONS"

and a disposition may not occur until after adjudication. *Id.* This court disagreed, holding:

> [C]ontrary to [the child's] argument, an adjudication is not required. The plain language of section 260C.193, subdivision 6, establishes that a district court's jurisdiction in a child-protection matter may continue until the individual's 19th birthday so long as the district court assumes jurisdiction over that matter before the individual's 18th birthday. Under Minnesota law, a district court has "original and exclusive jurisdiction in proceedings concerning any child who is *alleged* to be in need of protection or services." Minn. Stat. § 260C.101, subd. 1 (2006) (emphasis added). Jurisdiction does not depend on an *adjudication* that a child is in need of protection or services; rather, it attaches as soon as a sufficient allegation that a child is in need of protection or services is made. That section 260C.193 is entitled "DISPOSITIONS; GENERAL PROVISIONS" does not give us the authority to add to subdivision 6 a requirement for adjudication before the child's 18th birthday as a condition precedent for the district court's jurisdiction to continue.

Id. at 320-21 (citations omitted).

Here, the county acknowledges that it never moved to close the juvenile court file, and the district court did not dismiss the CHIPS petition or otherwise terminate jurisdiction sua sponte or by motion of one of the parties. And allegations that M.W.J. was in need of protection or services existed at the time of the January 2013 hearing. For all of these reasons, the juvenile court properly retained jurisdiction over the subsequent motions related to custody.

Further, even if the stipulated-custody arrangement was a permanency-placement disposition, the juvenile court retains jurisdiction. While Minn. R. Juv. Prot. P. 42.07, subds. 2, 4, terminate a juvenile court's jurisdiction if the court transfers permanent legal

and physical custody to a relative and instructs that a family court file be opened, Minn. Stat. § 260C.201, subd. 11(f), provides that "[o]nce a permanent placement determination has been made and permanent placement has been established, further court reviews are necessary if . . . *there is a disruption of the permanent or long-term placement.*" (Emphasis added.) Similarly, the 2012 statutes state that the juvenile court has original and exclusive jurisdiction in permanency matters, including transfers of permanent legal and physical custody to relatives, and require a hearing if a child is removed from a permanent placement within one year of that placement. Minn. Stat. §§ 260C.201, subd. 1, .521, subd. 4 (2012).

II.

The county argues that the juvenile court's January 2013 order does not serve M.W.J.'s best interests. We are bound by a deferential standard of review of factual findings in a CHIPS proceeding. *See In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (Minn. App. 2009). Those findings "are not reversed unless clearly erroneous or unsupported by substantial evidence." *In re A.R.M.*, 611 N.W.2d 43, 50 (Minn. App. 2000).

The county contends that M.W.J.'s move from Washington to Minnesota will cause a disruption that will have a substantial impact on her life, relying on the GAL's statement at the hearing on the county's motion that she was concerned that the move would be M.W.J.'s fourth within one year. Without question, stability is an important consideration in CHIPS cases. *See In re J.M.G.*, 360 N.W.2d 403, 409 (Minn. App. 1985), *review denied* (Minn. Apr. 12, 1985).

But the GAL also stated, "My concern is that the child has been removed from her permanent placement." The juvenile court responded that it agreed with the GAL's concerns "entirely." The record indicates that the juvenile court considered the number of moves as well as the change created by M.W.J.'s removal from her placement with T.D.G., maternal aunt, and K.V. While the juvenile court did not explicitly weigh the need for stability in M.W.J.'s life against removal from her placement in Washington, it is clear from its order that the juvenile court had serious concerns about M.W.J.'s best interests. *See Eckman v. Eckman*, 410 N.W.2d 385, 389 (Minn. App. 1987) (stating that the district court's failure to make a specific finding regarding the balancing of harms was not reversible error when the balancing test was implicit in the district court's findings on the child's best interests and endangerment); *see also Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000) ("[The] law leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations.").

The county contends that there is no support in the record for the juvenile court's finding that M.W.J. is endangered, necessitating the county to assume responsibility for her health, safety, or welfare. An order for emergency protective care requires findings that (1) there is a prima facie showing that the child is in surroundings or conditions that endanger the child's health, safety, or welfare, requiring the responsible social services agency to assume responsibility for her care and custody and (2) continuation of the child in custody of the legal custodians is contrary to the child's welfare. Minn. R. Juv. Prot. P. 28.02, subd. 1. The juvenile court's findings well satisfy those requirements.

The juvenile court found that maternal aunt and K.V.'s "unilateral decision to transfer the care of the child without a court order caused a collapse in the permanent placement of the child" and that this decision "is an abandonment of the child" which is "a prima facie showing [of] endangerment to the child's health, safety, or welfare." The juvenile court found that M.W.J.'s health and safety would be endangered if returned to any of the custodians "based upon evidence that Mother has had a recent relapse in her chemical dependency issues and [that maternal aunt and K.V.] no longer wish to have custody of the child." The juvenile court further noted that maternal aunt's and K.V.'s decision "has resulted in the child being moved to the State of Washington and out of the reach of both the biological parents and this court." The juvenile court concluded that maternal uncle and fiancée "are not parties to these proceedings and have done nothing to subject themselves to the jurisdiction" of the juvenile court. In addition, the juvenile court was not presented with any evidence that maternal uncle and fiancée have been properly vetted to assess their fitness to be custodians of M.W.J. These findings and conclusions are well-supported by the record.

We agree with the juvenile court that the child's health, safety, or welfare is endangered. The child was placed in the custody of relatives in a child-protection proceeding, the child's relative custodians no longer wish to have custody of the child and unilaterally placed the child with relatives in another state whose suitability as custodians is unknown, and the child's remaining custodian, T.D.G., is the subject of a current child-protection investigation regarding the child. The juvenile court's order

requiring M.W.J.'s return to Minnesota for resolution of these issues is most consistent with her best interests.

Affirmed.