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STATE OF MINNESOTA
IN COURT OF APPEALS
A14-1017

In the Matter of the Welfare of the Children of:
M. A. G. and M. D. M., Parents.

Filed November 24, 2014
Affirmed
Cleary, Chief Judge

Rice County District Court
File No. 66-JV-13-2163

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Considered and decided by Ross, Presiding Judge; Cleary, Chief Judge; and Schellhas, Judge.

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

CLEARY, Chief Judge

Appellant-mother challenges the termination of her parental rights to her two children, arguing that (1) the district court erred by finding that respondent-county made reasonable efforts to reunite the family, (2) the district court erred by finding a statutory basis to terminate her parental rights, and (3) the bifurcation of the parental rights termination from the Child in Need of Protection or Services (CHIPS) proceeding violated her right to due process. We affirm the district court's conclusions and find that the district court's procedure did not violate appellant's due process rights.

FACTS

On February 22, 2013, appellant and M.D.M. brought their eight-week-old daughter R.M. to Northfield Hospital to be treated for an injury to her left arm. R.M.'s examinations at Northfield Hospital and Gillette Children's Hospital revealed not only a fracture in R.M.'s left humerus, but also bruising on R.M.'s head, a skull fracture, rib fractures in various stages of healing, and a fracture of the lower end of R.M.'s tibia. The doctors examining R.M. found R.M.'s injuries inconsistent with the accidental fall that appellant and M.D.M. described. Instead, the doctors found R.M.'s injuries consistent with the types of injuries resulting from child abuse.

Procedural History

On March 4, 2013, respondent Rice County Social Services filed a CHIPS petition for R.M. and appellant's other child, K.M. The district court found that respondent had

made a prima facie case that it was unsafe for the children to return to their parents' care. The children were placed in foster care with their paternal grandmother. On June 7, 2013, following a contested adjudicatory hearing on the CHIPS petition, the court issued an order concluding that R.M. and K.M. were children in need of protection or services and ordered a disposition hearing on June 14, 2013.

Respondent filed a Termination of Parental Rights (TPR) petition with the court on August 26, 2013. At the contested CHIPS disposition hearing on September 19, 2013, respondent requested that the court relieve it of further reunification efforts pursuant to Minn. Stat. § 260.012(a)(1) (2012). In the court's September 20, 2013 order, the court found it could not discontinue reunification efforts because it had not made a finding that the parents had subjected the child to egregious harm, as required by Minn. Stat. § 260.012(a)(1). The court also extended the permanency deadline in the CHIPS file by 90 days to allow the parents additional time to engage in services to work toward reunification.

Services Provided

Since the March 6, 2013 hearing, appellant had visits with R.M. and K.M. a minimum of four times each week. Most of the visits were supervised and all of them took place outside of appellant and M.D.M.'s home.

Respondent developed an out-of-home placement plan (OHPP) for each child and discussed these plans with the parents on April 15, 2013. The OHPPs called for a parenting assessment and psychological evaluations of both parents. They also stated

that, for the children to return home, the parents needed to "acknowledge what happened to [R.M.] that caused her injuries and identify the household circumstances that were contributing factors in her abuse." Appellant and M.D.M. received a parenting assessment on May 20, 2013. Appellant also received a psychological evaluation. She was diagnosed with obsessive compulsive personality disorder.

Respondent developed a second OHPP for each child and discussed these plans with the parents on September 10 and 27, 2013. The OHPPs referred appellant to Fernbrook Family Center for parenting education through the Birth to Five program, as well as therapy focusing on "her mental health and maladaptive personality traits and how they influence her parenting and her children's safety." The OHPPs also recommended child development services at Northfield Public Schools and Fernbrook Family Center, provided for ongoing supervised visitation, and repeated the requirement that the parents acknowledge the cause of R.M.'s injuries. Appellant located her own therapist and began attending weekly therapy sessions focusing on her diagnosis of obsessive compulsive personality disorder.

Appellant's participation in parenting education was delayed, for a variety of reasons, until December 10, 2013. Respondent originally referred appellant and M.D.M. to a parenting education program through Rice County Public Health Nursing in July 2013, but appellant and M.D.M. moved outside of Rice County a short time after the referral and became ineligible for the program. On August 2, 2013, respondent referred the family to Fernbrook Family Center, where they began receiving parenting education

in September 2013 through the Birth to Five program. However, Fernbrook Family Center soon ceased services to appellant and M.D.M. because they were unable to "acknowledge that what the children have experienced . . . has been traumatic for them." Respondent then made a third referral for parenting education through the Exchange Club Center for Family Unity in November 2013, and the parents began attending parenting classes on December 10, 2013. By the date of the TPR proceeding, appellant and M.D.M. had attended nine parenting sessions at the Exchange Club.

Termination of Parental Rights Hearing

The TPR adjudicatory hearing occurred on March 10-14, 17, and 31, 2014. Throughout the time leading up to the TPR hearing, neither appellant nor M.D.M. ever identified any reasonable explanation for R.M.'s injuries. At the TPR hearing, the court took judicial notice of the findings of fact made after the CHIPS adjudicatory hearing, which included the finding that "the various injuries to [R.M.] occurred while she was being cared for by one or both of her parents." The court also allowed the parties to submit portions of the CHIPS record as evidence in the TPR hearing. The court heard testimony from appellant and M.D.M., the parents of appellant and M.D.M., and several professionals who had worked with the family since the children were removed from the home.

The district court concluded that respondent engaged in reasonable efforts to reunify the family; that five statutory bases justified terminating appellant's parental

rights; and that terminating parental rights was in the best interests of R.M. and K.M. Appellant now challenges the termination of her parental rights.

DECISION

"[P]arental rights may be terminated only for grave and weighty reasons." *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004). "The court must make its [termination] decision based on evidence concerning the conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (quotation omitted). Whether to terminate parental rights "is always discretionary with the [district] court." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014) An appellate court affirms the district court's termination of parental rights "when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted). The reviewing court gives the district court's decision considerable deference, because the district court is in a superior position to assess the credibility of witnesses. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). However, an appellate court "exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996).

I. Did the district court err in finding that respondent made reasonable efforts to reunify appellant with R.M. and K.M.?

Minn. Stat. § 260.012(h) (2012) requires courts in a TPR proceeding to either find that the responsible social services organization made reasonable efforts to reunite the family or find that additional services would be futile. *In re Children of T.A.A.*, 702 N.W.2d 703, 709 (Minn. 2005). Appellate courts review a district court's findings of fact to determine whether they are "clearly erroneous." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). A finding is clearly erroneous if "it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* at 660–61 (quotation omitted).

To determine whether reasonable efforts were made, the district court must consider whether the services offered to the parent were "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h). To be reasonable, the services must go beyond mere form and must instead include "real, genuine assistance" to enable the parents to overcome the conditions that led to the child's out-of-home placement. *In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1990), *review denied* (Minn. July 6, 1990). Analysis of the services should also consider "the length of the time the county was involved and the quality of effort given." *Id.*

The services that respondent provided to appellant included a parenting assessment, a psychological assessment, diagnostic assessments for R.M. and K.M.,

referrals to various parenting education providers, referrals to individual therapy, preparation of detailed OHPPs, and a rigorous supervised visitation schedule. The court found that these services satisfied the six criteria for services and represented an attempt to provide genuine assistance to the family to determine and overcome the conditions that led to the out-of-home placement.

Here, the conditions leading to R.M. and K.M. being removed from the home were R.M.'s multiple severe injuries, for which no reasonable explanation was available and which occurred while R.M. was in her parents' care. The OHPPs pointed out that, unless the parents "acknowledge[ed] the circumstances of the abuse, case management services cannot assess or initiate interventions to address the underlying causes." Thus, the services provided in the first OHPPs for R.M. and K.M. were largely intended to discover how the injuries had occurred and put structures in place to ensure that R.M. and K.M. would not be in danger of similar injuries in the future. Considering the unknown nature of R.M.'s injuries, these types of services constituted reasonable and appropriate assistance to appellant.

However, despite the diagnostic services provided under the first OHPPs, neither respondent nor the parents made progress toward identifying the circumstances of the injuries. As a result of this barrier, the subsequent services provided by respondent have not been tailored specifically to addressing particular safety concerns. The district court finding reflects its conclusion that respondent made substantial efforts to provide what services it could, without knowing the origins of the safety concerns that led to the out-

of-home placement. This conclusion is not clearly erroneous, particularly in light of the barriers respondent faced in providing reunification services that were specifically tailored to appellant and M.D.M.'s circumstances.

II. Did the district court err in finding a basis under Minn. Stat. § 260C.301 (2012) to terminate appellant's parental rights?

When reviewing a district court's decision regarding "whether a particular statutory basis for involuntarily terminating parental rights is present," appellate courts review "findings of the underlying or basic facts for clear error," and review the district court's "determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). If a single statutory basis for terminating appellant's parental rights is affirmable, the appellate court need not address any other statutory bases the district court may have found to exist. *In re Children of T.A.A.*, 702 N.W.2d 703, 708 n.3 (Minn. 2005). The district court found that there was clear and convincing evidence to support five statutory bases for terminating appellant's parental rights. Appellant challenges all five of the grounds the district court found for termination. We find two of the grounds particularly compelling and discuss these below.

The district court concluded that it could terminate appellant's rights under Minn. Stat. § 260C.301, subd. 1(b)(6), which allows termination where

> a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a

> reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Minn. Stat. § 260C.301, subd. 1(b)(6). "[I]n the parent's care" is not limited to the physical presence of a parent at the time egregious harm occurs. *In re Welfare of Child of T.P.*, 747 N.W.2d 356, 361 (Minn. 2008). Rather, where a parent has not been found responsible for inflicting egregious harm on a child, the court must find that the parent knew or should have known that the child had been subjected to harm meeting the definition of egregious harm. *Id.* at 362. "Egregious harm" is defined as "infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2012).[1]

The district court based its application of this statutory ground on its findings regarding the extent and severity of R.M.'s injuries, as well as the related medical findings from the CHIPS file, of which the court took judicial notice. The court found that the parents' failure to protect R.M. from the multiple and severe injuries she

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[1] Appellant asserts that terminating parental rights on this statutory basis is inconsistent with the court's September 20, 2013 order. That order stated that respondent could not discontinue reunification efforts because there had been no finding that the parents had subjected the child to egregious harm, as required under Minn. Stat. § 260.012(a)(1). We note that in the two contexts, the court was operating under two distinct statutes with distinguishable language. Both statutes use the statutory definition of "egregious harm" found in Minn. Stat. § 260C.007, subd. 14. However, Minn. Stat. § 260.012(a)(1) requires a finding that "the *parent subjected* a child to egregious harm," while Minn. Stat. § 260C.301, subd. 1(b)(6) merely requires a finding that the "child experienced egregious harm while *in the parent's care*." (Emphasis added). Because of these statutes' wording, the court's conclusion that the requisite finding had not been made under § 260.012(a)(1) is not inconsistent with the court's later decision to terminate appellant's parental rights under § 260C.301, subd. 1(b)(6).

sustained in the first eight weeks of her life constituted "neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care," which satisfied the definition of egregious harm under Minn. Stat. § 260C.007, subd. 14 (2012). Furthermore, the court found that the children were in the care of both parents and noted that appellant was the children's primary daytime caregiver. The court found specifically that "[b]oth parents should have known about the injuries as both lived in the home and cared for the children regularly." R.M.'s multiple injuries were of such a serious nature that we find no error in the district court's reasoning. The district court did not abuse its discretion by basing its termination of appellant's parental rights on this statutory ground.

The district court also concluded it could terminate appellant's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(8), which allows termination of parental rights where the children are neglected and in foster care. The phrase "neglected and in foster care" describes a child

> (1) who has been placed in foster care by court order; and (2) whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and (3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Minn. Stat. § 260C.007, subd. 24 (2012).

R.M. and K.M. were ordered into foster care. As of the trial date, no progress had been made toward determining who or what had endangered the children prior to their

removal from appellant and M.D.M.'s care. The court noted that this was not a "classic neglected and in foster care case where a parent simply disappears after the child is placed," but found that the "children [could] not be returned to the parents because the conditions leading to [R.M.]'s severe injuries have not been discovered and eradicated." Furthermore, the court noted that appellant had failed to share with respondent information about the goals and progress of her individual therapy, failed to help respondent identify the cause of R.M.'s injuries, and never acknowledged that "change is necessary to ensure the children's safety." The court concluded that these shortcomings constituted appellant's failure to make reasonable efforts to adjust her circumstances, condition, and conduct. We find the court's reasoning appropriate and conclude that the district court did not abuse its discretion in terminating appellant's parental rights based on this statutory ground.

To affirm the district court's termination of parental rights, this court need only find that one statutory ground was supported by clear and convincing evidence. We conclude that each of the two statutory grounds above is supported by clear and convincing evidence. Therefore, we need not reach the other three grounds for terminating appellant's parental rights. *See In re Children of T.A.A.*, 702 N.W.2d at 708 n.3.

III. Did the district court violate appellant's due process rights by refusing to take judicial notice of medical testimony from the CHIPS proceeding?

Appellant argues that the district court violated her due process rights through its choice to take judicial notice of only selected parts of R.M.'s and K.M.'s CHIPS record.

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted). In a TPR proceeding, the applicable due process standard is that of fundamental fairness. *In re Welfare of Children of B.J.B.*, 747 N.W.2d 605, 608 (Minn. App. 2008). The amount of prejudice resulting from the alleged violation is an essential component of due process. *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008).

In 2012, Minn. R. Juv. Prot. P. 33.01, subd. 3(b) stated that "[a]ny termination of parental rights petition shall be filed in the child in need of protective services file, if one exists." However, in accordance with judicial policy and local technological limitations, the TPR petition in this case was filed separately from the CHIPS file. As a result, evidence admitted in the prior CHIPS proceeding was not automatically a part of the TPR file. Appellant argues that this separation of files, as well as the court's refusal to take judicial notice of the entire CHIPS file, violated her right to due process.

We hold that the separation of the CHIPS file from the TPR file, in and of itself, did not violate appellant's due process rights. Effective July 1, 2014, Minn. R. Juv. Prot. P. 33.01, subd. 3(b) reads, "[a]ny termination of parental rights petition shall be filed *in a file separate from* the child in need of protective services file, if one exists." Order Promulgating Amendments to Rules of Juvenile Protection Procedure, ADM10-8041 (June 12, 2014) (emphasis added). With this amendment, the current version of Minn. R.

Juv. Prot. P. 33.01, subd. 3(b) is now in line with the district court's practice of filing a TPR matter separately from the corresponding previous CHIPS matter. This amendment instructs us that the supreme court views this practice as a fair and non-prejudicial procedure.

Nor did the court abuse its discretion or violate appellant's due process rights by choosing to take judicial notice of some, but not all, of the CHIPS record. When a TPR petition is in a separate file from the corresponding CHIPS proceeding, the court may take judicial notice of certain court records and files from prior adjudicative proceedings. *Matter of Welfare of D.J.N.*, 568 N.W.2d 170, 174-75 (Minn. App. 1997).

However, the court's discretion to take judicial notice of the CHIPS record is subject to two major limitations. First, the court may only take judicial notice of adjudicative facts that are not subject to reasonable dispute. Minn. R. Evid. 201(b). Testimony from a previous proceeding, as a matter in dispute, is off-limits to judicial notice. *Matter of Zemple*, 489 N.W.2d 818, 820 (Minn. App. 1992). Although testimony itself is readily verifiable, the facts as testified to by a particular witness are not beyond dispute. *Id.* The district court's discretion to take judicial notice of the prior proceedings is also limited by "the rule that any affected person is entitled to notice that identifies the portions of the record that the court will consider in determining adjudicative facts in the case." *Matter of Welfare of D.J.N.*, 568 N.W.2d at 175. This notice allows the parties opportunity to refute the implications of the record and to object to the admission of portions of the record on the basis that they are matters in dispute. *Id.*

The trial transcript shows that the district court was careful to comport with the limitations on judicial notice set in *D.J.N.* The district court expressed concern about the fairness of treating the CHIPS file separately from the TPR file and heard extensive arguments from the parties on the matter. The court eventually decided to take judicial notice of only the court orders, findings, and conclusions from the CHIPS record. In addition, if the parties wanted any other items from the CHIPS record admitted in the TPR hearing, the district court required them to (1) disclose to the other attorneys, before the hearing continued, which parts of the CHIPS record they would seek to admit at the TPR hearing, and (2) submit those parts of the CHIPS record as exhibits at the TPR hearing.

We conclude that the district court's decisions regarding the CHIPS record were neither a violation of appellant's right to due process nor an abuse of discretion. The court's decision provided notice to the parties of the portions of the CHIPS record that the district court would consider, and it gave the parties an equal opportunity to identify which portions of the CHIPS record that they wanted to have admitted as evidence at the TPR hearing. Because testimony from the CHIPS proceeding was a matter in dispute, the district court was correct not to take judicial notice of medical testimony from the CHIPS proceeding, and appellant should not have expected the court to do so. *See Matter of Zemple*, 489 N.W.2d at 820.

Additionally, we note that the court's decisions regarding the CHIPS matter did not prevent appellant from presenting additional medical evidence at the TPR hearing.

The record reflects that appellant did have the opportunity to present medical evidence, and she did as appellant's mother testified about her own vitamin D deficiency. After this testimony, the district court sustained two objections to the presentation of further medical evidence. First, the court sustained an objection to appellant's attempt to introduce reports that appeared to merely duplicate appellant's mother's testimony. Second, the court sustained an objection to the relevance of further testimony about the severity of appellant's mother's vitamin D deficiency, after appellant's attorney failed to explain the relevance of that testimony. The court did not abuse its discretion by excluding evidence that appeared duplicative and irrelevant. Minn. R. Evid. 402. Appellant could have offered additional medical evidence that was non-duplicative and relevant to the matters at issue in the TPR hearing, but never attempted to do so.

Appellant has not shown that the district court's decisions regarding the CHIPS record prejudiced appellant. If anything, the district court went out of its way to fairly accommodate the parties' need to reference relevant portions of the CHIPS file. We conclude that the district court's decisions regarding the CHIPS record were neither an abuse of discretion nor a violation of appellant's right to due process.

IV. Other issues not supported by analysis

Appellant raised three issues in the final page of her brief but did not cite to any legal authority or provide analysis in support of those allegations. Minnesota appellate courts generally decline to address allegations unsupported by legal analysis or inadequately briefed on appeal. *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 728

(Minn. 2005) (citing *Dep't of Labor & Indus. v. Wintz Parcel Drivers, Ind.*, 558 N.W.2d 480, 480 (Minn. 1997)). Because these issues were inadequately briefed before this court, we decline to address them here.

We conclude that respondent made reasonable efforts to reunite appellant with R.M. and K.M, that multiple statutory grounds for termination are supported by clear and convincing evidence, and that the district court's filing procedure did not violate appellant's right to due process. Therefore, we affirm the district court's termination of appellant's parental rights.

Affirmed.