STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1694

In the Matter of the Welfare of the Child of: C. L. F., Parent

Filed March 20, 2017
Affirmed
Connolly, Judge

Clay County District Court
File No. 14-JV-16-2806

Brian P. Toay, Wold Johnson, P.C., Fargo, North Dakota (for appellant)

Brian J. Melton, Clay County Attorney, Cheryl R. Duysen, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Laurie Christianson, Moorhead, Minnesota (guardian ad litem)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Randall, Judge.*

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

CONNOLLY, Judge

Appellant challenges the district court's determination that her child is in need of protection or services. We affirm.

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

FACTS

Appellant-mother C.L.F. lives in the Fargo-Moorhead area with her 18-year-old son, Z.O., a friend, C.Y., and N.F. N.F. is the subject of the challenged child-in-need-of-protection-or-services (CHIPS) adjudication. Appellant moved to Fargo-Moorhead from her previous home in Utah because her family was trying to put her in a nursing facility for her multiple sclerosis. Appellant moved to Fargo-Moorhead so that C.Y. could take care of her.

Appellant "requires care from a caregiver. She is reliant on a wheelchair and a walker for mobility. On good days the walker will suffice. Otherwise she requires the wheelchair. Some[ ]days she struggles to get out of bed." Given these limitations, the district court determined that appellant is a vulnerable adult. In addition to the M.S. diagnosis, appellant has a diagnosis of major depression and has been hospitalized 18-20 times related to that diagnosis, most recently for three days within two weeks before the trial in this matter. Appellant suffered a traumatic brain injury in 2003, but has adjusted to the resultant "new normal." Appellant has also been the victim of sexual abuse by her father and each of her two husbands, and her two husbands physically abused her. She testified that she "removed [her first] husband from the home for abuse," and has told her current husband that he cannot come back to the home.

Appellant has had extensive involvement with social services. She has seven children. Her oldest was put up for adoption at birth, and appellant will not raise any of her other six children to adulthood. When appellant moved in the past, she transferred guardianship of two sons so they could remain in a certain school system despite

appellant's moving. Appellant testified that she does not know why Z.O. was removed from her home, but believes it was because Z.O. kicked N.F. despite a court order of no contact. There are pending criminal proceedings in Utah in which appellant is accused of kidnapping Z.O. from foster care. Two twin boys were removed from the home two years apart after one made attempts on two of his brothers' lives and the other made attempts on N.F.'s life.

N.F. is the only child who, until this proceeding, had not been removed from appellant's custody. N.F. has been diagnosed with "an autoimmune deficiency, neurofibromatosis and autism and he's got chiari malformation and he has had fibroma activity on the brain," as well as ADHD. His autism, though not classified as severe, affects his ability to communicate. N.F. is incontinent, has memory issues, and "is unable to consistently remember how to complete daily activities." N.F. was eight at the time of this proceeding.

Z.O. lives in the home as well. Z.O. was accused of sexually abusing a neighbor child, though he was never charged. Social services in Utah received reports that Z.O. had been sexually abusing three of his brothers (not including N.F.). During an interview with a social worker, Z.O. disclosed "that he has a sexual attraction to [N.F.] that began when [N.F.] was two years old." Z.O. indicated he had never acted on his attraction to N.F., and explained that he had a plan in place to avoid such behavior: he spends no time alone with N.F., leaves the room if N.F. removes his shirt, never goes in N.F.'s room, and never lets N.F. sit in his lap. Remarkably, appellant does not believe that allowing Z.O. to live in her house raises concerns for N.F.'s safety.

According to the initial petition, respondent Clay County Social Services became involved with appellant's family on August 5, 2016 after receiving a report describing neglect due to inadequate provision for N.F.'s physical needs and a history of involvement with social services. Social services also learned that C.Y. was "living in the home with the family and that she has significant child protection history resulting in the loss of her parental rights of her own children." The petition also included allegations of repeated sexual assault of N.F. by Z.O., but additional subsequent reports clarified that this was not the case.

Social services visited appellant's home on August 8, when an assessment worker spoke with appellant and her family about the report. Later that day, social services received documentation from Utah social services, and a social worker and her colleague returned to speak with the family. They discussed the documentation, appellant's experiences with domestic violence, and appellant's plan to protect herself and N.F. from her husband. At the time, the social worker and her colleague were concerned with Z.O.'s presence in the home and his ability to police his own safety plan.

N.F. was removed from appellant's home. The district court conducted an emergency-protective-care hearing two days later, and ordered N.F. to remain out of appellant's custody pending trial. It conducted a court trial and subsequently adjudicated N.F. in need of protection or services. This appeal follows.

D E C I S I O N

A natural parent is presumed to be "a fit and suitable person to be entrusted with the care of [her] child." *In re Welfare of C.K.*, 426 N.W.2d 842, 847 (Minn. 1998) (quotation

omitted). A child only meets "the statutory definition of a child in need of protection or services under [Minn. Stat. §] 260C.007, [subd.] 6, [if] one of the enumerated child-protection grounds exists and the child needs protection or services as a result." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 732 (Minn. App. 2009) (quotation omitted); *see* Minn. Stat. § 260C.007, subd. 6 (2016). Given the presumption of fitness, allegations in a CHIPS petition "must be proved by clear and convincing evidence." *In re Welfare of S.J.*, 367 N.W.2d 651, 654 (Minn. App. 1985).

"The district court is vested with broad discretionary powers when deciding juvenile-protection matters." *S.S.W.*, 767 N.W.2d at 733 (quotation omitted). "Findings [of fact] 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). Factual findings are clearly erroneous when a "review of the entire record leaves the court with the definite and firm conviction that a mistake has been made." *Id*. (quotation omitted). This court "will closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998). But this court is "bound by a very deferential standard of review" in considering the district court's factual findings on appeal from a CHIPS determination. *S.S.W.*, 767 N.W.2d at 734.

Appellant argues that the social worker's testimony was not credible and that the evidence itself does not support a finding that N.F. is a CHIPS. We address each point in turn.

Social Worker's Credibility

Appellant argues that the social worker's testimony is not credible or reliable enough to provide the district court with clear and convincing evidence. Appellant characterizes a main issue at trial as whether appellant had help to care for N.F. given her physical limitations, and contends that C.Y. was an appropriate person to hold that position. She asserts that the district court relied on the social worker's testimony when it determined that C.Y. was not an appropriate fit for the role, which she argues "is not proven by clear and convincing evidence because the testimony of [the social worker] is unreliable." To support her argument that the testimony is neither credible nor reliable, appellant contends that the social worker "intentionally included false information in the Petition" and did not correct the information "at the Emergency Protective Care hearing after N.F. was removed from the home," and that the social worker testified falsely regarding when she drafted the petition. Appellant also argues that the social worker knowingly signed the false petition under oath; relayed the same false information to N.F., risking further victimization of N.F.; and provided that information to the supervised-visitation center.

At trial, the social worker acknowledged her failure to clarify the record at the emergency-protective-care hearing. The state contends that while she made mistakes, which she admitted, "[t]here is nothing in the evidence to suggest that [she] 'intentionally' meant to mislead the court." To contextualize her mistakes, the state notes that three individuals worked on "this complicated and serious investigation involving multiple state child protection agencies over a period of two weeks." The social worker and her colleagues had to request records from six states in which appellant or her children had

lived. Ultimately, based in part on the social worker's testimony and investigation, the state decided it had insufficient evidence to support a finding that N.F. was physically and sexually abused. It chose not to ask the district court for a ruling on those allegations.

Appellant contends that the district court relied on the social worker's unreliable testimony to determine that appellant did not have a third party to assist her in the home and that C.Y. was inappropriate for that role. But the court made no such findings. Instead, the district court found that N.F. 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 . . . ." *See* Minn. Stat. § 260C.007, subd. 6(3). At most, this finding implies that the district court did not find that C.Y. sufficiently supplemented appellant's ability to care for N.F.

As noted above, this court applies a deferential standard of review to the district court's factual findings. *S.S.W.*, 767 N.W.2d at 734. Moreover, this court generally defers to a district court's credibility determinations. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The district court implicitly credited the social worker's testimony when it included her assessment of N.F.'s safety concerns in its findings. The district court also indicated mistrust of appellant's testimony, noting that it found one statement "hard to believe" and that her description of her child-services and court involvement in Utah was not credible. The district court heard testimony from the social worker about the mistakes she made and the falsehoods in the initial report, and still credited her testimony as a basis for its other findings. We defer to this credibility determination.

Sufficiency of the Evidence

Appellant argues that the evidence does not support the district court's adjudication of N.F. as in need of protection or services. She asserts that while she does have "some physical and mental issues" and sometimes "is unable to provide adequate care for N.F." on her own, C.Y. lives with her to assist as needed. According to appellant, "the County did not present sufficient evidence to show how or why C.Y. was not an adequate third person to ensure the safety of N.F.," and appellant has shown she is willing and able to care for N.F., in part by having "full-time" assistance of C.Y. We disagree.

As noted above, this court closely inquires into the sufficiency of the evidence. *J.M.*, 574 N.W.2d at 724. But we defer to the district court's factual findings "unless the review of the entire record leaves the court with the definite and firm conviction that a mistake has been made." *B.A.B.*, 572 N.W.2d at 778.

The district court did not make any findings as to the appropriateness of C.Y. as a care provider for N.F. The only findings regarding C.Y. include that she asked for her adult son to stay in appellant's home with them for a week because "[h]e was a drug user and feared for his safety." The district court found allowing this to be a poor decision on appellant's part. But the record contains substantial evidence that calls into question C.Y.'s ability to provide protection for N.F.

Appellant testified that C.Y. had her own children removed from the home, and there were "allegations that one of her boys abused one of [appellant's] boys." When asked if she was "at all concerned that [one of C.Y.'s sons] had sexually abused [appellant's] twin boys; that he may have inclinations to abuse [N.F.] that way," appellant responded

"No, never crossed my mind." That son was the adult son who stayed with appellant and her family for a week. Social services had concerns about C.Y. "not being able to provide as a safe person . . . given her child protection history."

When asked if social services considers C.Y.'s "presence in the home a protective factor" for N.F., the social worker answered, "No." While social services did consider C.Y. as a potential additional care provider, they ultimately concluded that C.Y. could not fill that role because she was unable to identify all of social services' safety concerns. C.Y. could only identify safety concerns regarding appellant's abusive husband, and did not recognize any other issues. And while C.Y. is not currently working, the record shows that she is seeking employment, meaning she would not be in the home full-time. The family did have another friend who could be "on-call" if C.Y. was unavailable, but it seems appellant could not find someone to live with her and provide care full-time as requested.

The social worker testified that there remained concerns that appellant's mental health would prevent her from consistently being in the home, and that appellant's physical health would prevent her from intervening if someone was trying to harm N.F. The social worker further testified that appellant and her husband were best friends, and she feared appellant would try to involve her husband in N.F.'s life despite the very real risk of domestic violence.

In sum, this court generally defers to the district court's credibility determinations, the district court here credited the social worker's testimony, and appellant has not shown that testimony is unreliable. Substantial evidence in the record supports the district court's finding that C.Y. presented concerns as an additional care provider. Finally, the record is

clear, and appellant does not deny, that appellant is unable to care for N.F. without assistance. For the foregoing reasons, we conclude that the district court did not clearly err in its factual findings and did not abuse its discretion in adjudicating N.F. in need of protection or services.

Affirmed.