STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0212

In the Matter of the
Welfare of the Child of: A. E., Parent.

Filed August 7, 2017
Affirmed
Cleary, Chief Judge

Ramsey County District Court
File No. 62-JV-15-3274

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Considered and decided by Smith, Tracy M., Presiding Judge; Cleary, Chief Judge; and Toussaint, Judge.*

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

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

CLEARY, Chief Judge

Appellant-mother, A.E., argues that the district court erred by adjudicating F.W. as a child in need of protection or services (CHIPS), by admitting certain evidence, and by denying her requests for reunification. We affirm.

FACTS

F.W. was born in 2015 and is the child of appellant and J.W. Both appellant and J.W. cared for F.W., at times without any other person present. F.W. attended New Horizons daycare about once or twice a week from late summer 2015 until early December 2015 and attended the YMCA daycare six times between October and December 2015. In November 2015, appellant noticed a bruise on F.W.'s left jaw after a visit to her sister's home. On December 4, 2015, J.W. cared for F.W. for a couple of hours while appellant was at work. On December 5 and 6, 2015, J.W. attended navy drill and appellant cared for F.W. alone from approximately 6:30 a.m. to 4:30 p.m.

On December 7, 2015, appellant took F.W. to his pediatrician, Dr. Mayrand, after appellant and J.W. saw that F.W.'s eyes were red. Dr. Mayrand observed that F.W. had several finger-sized bruises on his cheeks, a bruise along his jaw, a bruise on his ear, and a bruise on his left shoulder. She also observed a dense concentration of petechiae on both of F.W.'s upper eyelids and red subconjunctival hemorrhages around the irises of both eyes. Dr. Mayrand instructed appellant to take F.W. to the emergency room at Children's Hospital. Later that day, F.W. was examined by Dr. Swenson, a pediatrician at Midwest Children's Resource Center who is certified in child abuse pediatrics. Appellant told

Dr. Swenson that F.W. looked like he had been in a "bar fight" when he woke up that day and described previous bruising that occurred on F.W.'s face in November 2015. Appellant and J.W. denied that F.W. had fallen from a significant height. Dr. Swenson observed F.W.'s bruising and ordered a skeletal survey, which revealed a healing rib fracture that likely occurred at least 7 to 14 days earlier, but might have been older. F.W. was placed on a protective hold.

On December 9, 2015, Julie Anderson, a Ramsey County child-protection worker, and Sergeant Mollner, a detective with the St. Paul Police Department, interviewed appellant and J.W. separately. In her interview, appellant said that F.W. fell out of his bouncy seat on December 6, 2015 and suggested that this fall caused the bruise under F.W.'s eye. Appellant reported that F.W. sometimes fell from a seated position onto toys or hit his head on a mirror, but offered no other specific explanations for F.W.'s bruises. Appellant wondered if F.W.'s rib fractured when J.W. played with F.W. by tossing him up and catching him and indicated that a medical condition caused F.W.'s bruising. Anderson and Sergeant Mollner then interviewed J.W., who said that F.W. had fallen into toys. He said that he threw F.W. into the air when appellant returned from a trip to see her sister, but explained that F.W. laughed and that he did not know how F.W. could have broken a rib.

In December 2015, the Ramsey County Community Human Services Department (RCCHSD) filed a CHIPS petition alleging that F.W. was abused and the district court ordered RCCHSD to assume emergency protective care of F.W. An emergency protective care evidentiary hearing was held that month. Appellant testified that she did not harm

F.W. and did not believe that J.W. or anyone else had harmed F.W. Appellant testified that F.W.'s injuries could be caused by a medical condition and denied that she had considered that J.W. could have hurt F.W. J.W. testified that he did not injure F.W. and had considered that appellant might have hurt F.W., but immediately dismissed the idea.

In December 2015 and January 2016, F.W. was evaluated by several doctors. These evaluations did not reveal a metabolic bone disease, rickets, osteogenesis imperfecta, or Ehlers-Danlos syndrome (EDS).

On January 6, 2016, J.W. told appellant that he wanted to shoot himself and assaulted appellant. On January 8, 2016, J.W.'s body was discovered after he committed suicide. A suicide note was found and read, in part:

> I hurt my wife, who I love completely. I can't beat alcohol and anger. . . . I love my son, please forgive my tremendous weakness. I hurt my son. Then lied about it to everyone. And will never forgive myself. I can't bear the shame. I'm done. A lifetime of service to others destroyed by one moment of weakness. . . .
>
> I died of PTSD. The stress of the world was too much for me.

In January 2016, Sergeant Mollner interviewed appellant. Sergeant Mollner told appellant that J.W. left a note stating that he hurt F.W. and asked appellant what she believed caused F.W.'s injuries. Appellant said that she did not believe that J.W. hurt F.W, that J.W. and appellant had discussed the idea of J.W. claiming that he hurt F.W. so that F.W. could be returned to appellant's care, and that J.W. told appellant that he would have to kill himself if he claimed responsibility for F.W.'s injuries. Anderson also interviewed appellant following J.W.'s death. Appellant stated that even before she saw J.W.'s suicide

note she knew that he would take responsibility for hurting F.W. Appellant stated that, before J.W.'s death, she sent an e-mail to her attorney asking whether F.W. could come home if appellant falsely said that she injured F.W. even though she had not harmed him. She said that J.W. said that he could admit that he hurt F.W., but that he was such a poor liar that he would have to kill himself.

In January 2016, appellant testified before the Minnesota Legislative Task Force on Child Protection and stated that Dr. Mayrand, RCCHSD, and appellant's ex-husband, H.C., conspired to falsely accuse appellant and J.W. of abuse and to prevent them from pursuing a medical diagnosis for F.W.

A CHIPS trial commenced in April 2016 and continued into November 2016. Numerous witnesses testified and appellant testified on several occasions. Appellant's ex-husband testified that he had two children with appellant and he discussed their respective roles in parenting those children. H.C. denied speaking with F.W.'s pediatrician about F.W. Ramona Olson and Matthew Shore, who respectively served as the guardian ad litem and parenting-time evaluator in the case involving appellant and H.C., testified and submitted reports indicating that appellant distorted things and attempted to undermine H.C.'s relationship with their shared children.

Providers from the New Horizons and YMCA daycares testified about their policies and how the daycares report injuries that occur while a child is in their care. No evidence produced at trial showed that F.W. suffered an injury at either daycare.

Various doctors also testified. Dr. Mayrand testified that F.W.'s bruising was not consistent with self-injury and that she was concerned about abuse. Dr. Swenson testified

that F.W.'s rib fracture could not have been caused by birth trauma, and explained that F.W.'s bruises could not have resulted from a single fall or from self-injury and were unlikely to have been caused by a single blow. Dr. Swenson opined that F.W.'s injuries were clinically diagnostic of child abuse. Dr. Maxwell-Wiggins testified that lab tests showed that F.W.'s vitamin D level was normal. He testified that both F.W.'s bruising and rib fracture could be explained by trauma. Dr. Maxwell-Wiggins testified that if a child's injuries were caused by a medical condition, he would expect injuries to recur while the child was in protective custody. Dr. Rittenhouse testified that he did not believe that F.W. had rickets or osteogenesis imperfecta and that he saw no radiological evidence of a metabolic bone disease. He explained that abuse is a concern when no reasonable explanation is provided for a fracture in a non-mobile infant. Dr. Scharer testified that appellant displayed some clinical symptoms of EDS and likely has some form of a connective-tissue disorder. But he explained that he did not believe that F.W. suffered from the same condition. Dr. Morkeberg testified that he saw some marks on F.W.'s skin in January 2016, but did not believe they were bruises.

Jacqueline Harden, an RCCHSD case aide, testified that she supervised F.W.'s visits with his parents between December 2015 and April 2016. Harden testified that F.W. was becoming increasingly mobile and sometimes fell and bumped his head, but that she never observed any marks or bruises after F.W. hit his head. Sergeant Mollner and Anderson testified regarding their interviews and interactions with appellant and J.W.

In October 2016, appellant testified to the following. When she arrived home one day in October 2015, she found J.W. and F.W. covered in fecal matter, soap, and water.

J.W. told her that F.W. slipped while being bathed and she discovered a bruise on F.W.'s forehead.[1] After her nephew played roughly with F.W. in November 2015, F.W. developed a bruise on his left jaw, which was still visible on December 7, 2015. She did not notice any other injuries in November 2015. In December 2015, she noticed changes in J.W., including hypervigilance and crying at the sight or sound of a baby. Before appellant saw J.W.'s suicide note, she learned that J.W. claimed that he hurt F.W. Appellant could not begin to make sense of things until she saw the suicide note on February 17, 2016. She testified that what J.W. wrote "might be true on some level," and "even if [F.W.] did have the same medical history I do, that doesn't mean that he can't also be abused. They're not mutually exclusive." She acknowledged that F.W. was abused and said that she would do anything to protect him. Appellant explained that she reviewed J.W.'s records and that her view of what happened to F.W. changed significantly between January 2016 and October 2016.

Carol Tellett, a psychologist with experience in Hennepin County's family court services, testified about the parenting assessment and forensic psychological evaluation that she completed of appellant. Tellett testified that she believed that J.W. was F.W.'s sole abuser, had been unaware that Dr. Swenson determined that there was a pattern of abuse, and believed that this information was important in determining the weight to be given to her report. Tellett testified that some of her testing relied on self-reported

[1] Appellant explained that she did not report this incident to social services because she was only asked about F.W.'s bruising history beginning in mid-November 2015.

information and that she understood that there was a concern that appellant might distort information.

In October 2016, appellant requested reunification with F.W. In November 2016, the district court denied appellant's motion for reunification, stating that the issue of appellant's ability to protect F.W. was to be determined at trial.

In November 2016, the court heard testimony from appellant and Kelly Brunclik, the court-appointed guardian ad litem. Appellant testified that she sent an e-mail to her attorney on December 23, 2015, asking what would happen if she said that she injured F.W. Brunclik testified that she was concerned that appellant maintained that F.W. suffered from a medical condition despite being told by medical professionals that F.W.'s injuries were not caused by a condition. Brunclik also explained that she was concerned that appellant might not reliably report information if F.W. suffered another injury.

On December 5, 2016, the district court filed its findings of fact, conclusions of law, and order for adjudication, adjudicating F.W. as a CHIPS. The next day, the district court filed an amended order, correcting clerical errors made in the December 5, 2016 order. On December 15, 2016, appellant moved for the correction of clerical errors, amended findings and conclusions, a new trial, and a stay pending appeal. On December 23, 2016, appellant filed a notice of appeal. On January 11, 2017, this court dismissed appellant's appeal as premature. On January 26, 2017, the district court filed an order granting appellant's motion for the correction of clerical errors and denying appellant's motion for a new trial. That same day, the district court separately filed its second amended findings of fact, conclusions of law, and order for adjudication (second amended order). Appellant now

challenges the district court's CHIPS adjudication and denial of her requests for reunification.

D E C I S I O N

I. CHIPS Adjudication

Appellant asks this court to reverse the CHIPS adjudication. She argues that the district court erred in assessing the credibility of the witnesses and in making its factual findings and that, absent these erroneous credibility and factual determinations, the district court's conclusions are unsupported by substantial evidence and must be reversed.

A district court has broad discretion when deciding child-protection matters. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009). When an appellate court reviews "a determination whether a child is in need of protection or services, . . . [i]t should be kept in mind that a trial court . . . has the opportunity to see the parties as well as their witnesses, hear their testimony, observe their actions, and weigh the evidence in light of those factors." *Id.* at 734 (quotation omitted). Unless the district court clearly abused its discretion, this court must affirm. *Id.*

A. *We defer to the district court's credibility determinations.*

This court gives considerable deference to a district court's credibility determinations "because a district court is in a superior position to assess the credibility of witnesses." *Id.* at 733; *see In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990) (recognizing that district courts are in a better position to determine credibility). Because the evidence supports the challenged credibility determinations, we defer to the district court.

Appellant argues that J.W.'s suicide note is inherently credible and that the district court misconstrued it. But the evidence supports the district court's determination. Appellant stated that she knew that J.W. would take responsibility for F.W.'s injuries even before seeing J.W.'s suicide note, and that J.W. had talked about falsely admitting that he hurt F.W. and then killing himself. We defer to the district court's determination that J.W.'s suicide note is not conclusive evidence that J.W. hurt F.W.

Appellant also challenges the district court's determination that some of her testimony lacked credibility. In particular, appellant argues that the district court erred by failing to credit her testimony that she accepted that J.W. abused F.W. only after reviewing J.W.'s documents and other evidence. The evidence shows that appellant falsely testified before the legislative task force and considered falsely admitting that she injured F.W. Because this evidence suggests that appellant was willing to falsify information during the CHIPS proceeding, we defer to the district court's credibility determination. Appellant argues that the district court cannot declare her patently not credible and then credit her statements regarding J.W.'s suicide note. Appellant misconstrues the district court's order. Although the district court found that some of appellant's statements lacked credibility, it did not find her "patently" not credible. A fact-finder may properly find some of a witness's statements credible and others not credible.

Appellant argues that the district court erred by determining that Tellett's testimony and report lacked credibility. At trial, Tellett testified that: (1) she had not previously performed any parenting assessment for a child-protection case in Ramsey County; (2) she did not know whether there were standards or guidelines for forensic psychology; (3) she

was unaware that Dr. Swenson found that F.W. was subjected to a pattern of abuse and that this information would be important in determining the weight to be given to her report; (4) some of her testing relied on appellant's self-reported information; and (5) she understood that there was a concern that appellant might distort information. Because this evidence calls into question the accuracy of Tellett's conclusions, we defer to the district court's credibility determination.

B. *The district court's factual findings are supported by clear and convincing evidence.*

Appellant next challenges certain factual findings made by the district court. In juvenile-protection proceedings, we closely review the sufficiency of the evidence to determine whether it is clear and convincing. *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998). We will reverse the district court's factual findings only if they are clearly erroneous or unsupported by substantial evidence. *S.S.W.*, 767 N.W.2d at 733. A finding is clearly erroneous if 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 (quotation omitted).

Appellant asserts that the district court's finding that appellant, either alone or with J.W., abused F.W. is not supported by clear and convincing evidence. However, the district court did not find that appellant abused F.W. Rather, the district court found that "[t]here is clear and convincing evidence that [F.W.] was injured in the care of [appellant], [J.W.], or both," but that "[t]here is not clear and convincing evidence that [F.W.] was injured in the care of any one of those." The evidence supports these findings. Both appellant and

J.W. cared for F.W. and were sometimes alone with F.W. Although F.W. also received care at the New Horizons and YMCA daycares, the evidence shows that F.W.'s abuse did not occur at either daycare because each used multiple care providers to care for F.W., documented injuries that occurred at daycare, and did not provide any evidence that F.W. was injured at daycare. Clear and convincing evidence shows that F.W. was injured while in the care of appellant, J.W., or both.

Appellant argues that the district court's finding that appellant failed to protect F.W. is not supported by clear and convincing evidence. She asserts that she did not directly observe the abuse and, because mandated reporters spent time with F.W. without noticing his rib fracture, it was unreasonable to conclude that she should have known about the abuse. She argues that she appropriately sought medical care for F.W. and that the district court erred by finding that she failed to protect F.W. after he was taken into protective custody. The evidence shows that appellant failed to recognize F.W.'s visible injuries as a product of repeated abuse and failed to take corrective action. Employees at New Horizons daycare observed that F.W. came in with multiple facial bruises and inquired about the origins of the bruising. Appellant failed to seek medical care for F.W. until he looked like he had been in a "bar fight." The fact that mandated reporters did not report abuse does not preclude the district court from finding that appellant failed to protect F.W.

Furthermore, the district court's finding is supported by appellant's refusal to accept that F.W. was repeatedly abused and her promotion of implausible explanations for F.W.'s injuries. In January 2016, appellant testified before the legislative task force that Dr. Mayrand, RCCHSD, and H.C. conspired to falsely accuse J.W. and appellant of abuse

and to deny F.W. access to medical care. However, no evidence in the record supports this testimony. And, until the spring of 2016, appellant continued to claim that F.W.'s injuries were caused by a medical condition despite doctors' opinions that no underlying condition could explain F.W.'s bruising and broken rib. Finally, the finding is supported by appellant's consideration of a plan to falsely admit to injuring F.W., which could have again exposed F.W. to abuse. Clear and convincing evidence supports the district court's finding that appellant failed to protect F.W.

C. ***The CHIPS adjudication is supported by at least one statutory basis.***

Appellant argues that the CHIPS adjudication must be reversed because the district court's determination that F.W. was in need of protection or services is not supported by clear and convincing evidence. Appellant argues that the determination that F.W. needed protection or services was based on her failure to protect and asserts that there was no evidence of a risk of abuse at the time of the CHIPS adjudication because J.W. was dead and she was not seeking a relationship with a potential abuser.

A parent is presumed to be fit to care for his or her child. *In re Welfare of C.K.*, 426 N.W.2d 842, 847 (Minn. 1988). Before a district court adjudicates a child as a CHIPS, it must determine that at least one statutory basis exists to support its decision. *S.S.W.*, 767 N.W.2d at 728. A statutory basis exists if one of the child-protection grounds enumerated under Minn. Stat. § 260C.007, subd. 6 (2016), exists and the child needs protection or services as a result. *S.S.W.*, 767 N.W.2d at 732. The district court found that F.W. was a child in need of protection or services under the statutory bases enumerated in section 260C.007, subdivision 6(2), (3), (8) and (9).

A CHIPS petition may be granted if a child requires protection or services because the child "has been a victim of physical or sexual abuse . . . [or] resides with or would reside with a perpetrator of domestic child abuse." Minn. Stat. § 260C.007, subd. 6(2). The district court found that F.W. was a victim of physical abuse in the form of multiple blows to the head and shoulder and extreme squeezing sufficient to break a rib and that F.W. was injured while in the care of appellant, J.W., or both. Because these findings are supported by clear and convincing evidence, the child-protection grounds of section 260C.007, subdivision 6(2), have been met. However, section 260C.007, subdivision 6(2), can provide a proper statutory basis for the CHIPS adjudication only if, at the time of the adjudication, F.W. needed protection or services because he was currently at risk of abuse. *See S.S.W.*, 767 N.W.2d at 733 (stating that the key inquiry is "whether the child in question is being abused or neglected or appears to be presently at risk"). Here, it is unclear whether F.W. was currently at risk of abuse and in need of protection or services at the time of the CHIPS adjudication because it is unclear who abused F.W. Because other statutory bases support the CHIPS adjudication, we need not determine whether the adjudication was supported by section 260C.007, subdivision 6(2).

The district court also found that F.W. needed protection or services under the bases enumerated in section 260C.007, subdivision 6(3), (8), and (9), because appellant failed to protect F.W. These provisions provide that a CHIPS petition may be granted if a child requires protection or services because the child:

> (3) 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 . . . is unable or unwilling to provide that care; . . .
>
> (8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent . . . ; [or]
>
> (9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others.

Minn. Stat. § 260C.007, subd. 6.

The district court's determination that F.W. needed protection or services under section 260C.007, subdivision 6(3), (8), and (9), was based on an implicit finding that appellant should have known that F.W. was being abused. The district court found that: (1) appellant failed to recognize F.W.'s visible injuries as a product of physical abuse and failed to intervene; (2) a daycare provider from New Horizons testified that she observed a bruise on F.W.'s face about ten times; and (3) appellant refused to accept the conclusions of highly trained medical professionals that F.W.'s injuries were not caused by a medical condition. When read as a whole, the second amended order indicates that the district court found that appellant should have known about the abuse.

The district court found that appellant was unable or unwilling to provide required care for F.W. because she failed to protect F.W. Clear and convincing evidence shows that appellant was unable or unwilling to provide required care for F.W. because: (1) appellant should have known of the abuse; and (2) appellant failed to recognize F.W.'s injuries as a product of abuse and to intervene to prevent further abuse. Because the child-protection grounds of section 260C.007, subdivision 6(3), have been established, we must determine whether F.W. required protection or services because appellant was unable or unwilling to provide required care. The key inquiry is whether the child in question is presently at risk.

S.S.W., 767 N.W.2d at 733. Appellant asserts that F.W. did not need protection or services at the time of the CHIPS adjudication because J.W., his abuser, was dead. In its order, the district court explicitly acknowledged J.W.'s death and concluded that F.W. was in need of protection or services under section 260C.007, subdivision 6(3). In doing so, the district court implicitly found that appellant's failure to protect F.W. was not merely a failure to protect F.W. from J.W., but rather a general failure to protect F.W. from others. Clear and convincing evidence shows that, at the time of the CHIPS adjudication, F.W. needed protection or services because appellant was unable or unwilling to provide required care because she failed to protect F.W. The CHIPS adjudication was supported by section 260C.007, subdivision 6(3).

The district court also found that F.W. was without proper parental care because of appellant's emotional, mental, or physical disability, or immaturity. To support its finding that F.W. needed protection or services under section 260C.007, subdivision 6(8), the district court cited *In re Welfare of S.A.V.*, 392 N.W.2d 260, 263 (Minn. App. 1986). In *S.A.V.*, this court held that "[a]buse by a parent, or knowledge of abuse by another without taking corrective action is clear evidence of emotional disability or immaturity of a parent." 392 N.W.2d at 263. Here, the district court implicitly found that appellant should have known that F.W.'s injuries were caused by abuse. Because *S.A.V.* did not address whether a parent's unreasonable failure to recognize abuse and take corrective action is clear evidence of the parent's emotional disability or immaturity, *S.A.V.* is not dispositive. Other statutory bases support the CHIPS adjudication at issue here. As a result, we need not determine whether the adjudication was supported by section 260C.007, subdivision 6(8).

Finally, the district court found that F.W. was in need of protection or services because his condition or environment was injurious or dangerous to F.W. or others. Here, there is clear and convincing evidence that F.W. was in need of protection or services at the time of the CHIPS adjudication because F.W.'s condition or environment was injurious or dangerous to him. Clear and convincing evidence shows that: (1) F.W. was injured while in the care of appellant, J.W., or both; (2) appellant should have known of the abuse; and (3) appellant failed to recognize F.W.'s injuries as a product of abuse and to intervene to prevent further abuse. And clear and convincing evidence shows that F.W. was presently at risk because appellant was unable to recognize and intervene to prevent abuse at the time of the CHIPS adjudication. The CHIPS adjudication was supported by section 260C.007, subdivision 6(9).

Because the statutory bases of section 260C.007, subdivision 6(3) and (9), supported the CHIPS adjudication, the district court did not err by adjudicating F.W. as a CHIPS.

II. Evidentiary Rulings

Appellant argues that the district court erred by admitting the testimony and records of H.C., Olson, and Shore. She argues that this evidence was irrelevant character evidence and confused the issues to be determined in the CHIPS proceeding. The district court has discretion in determining whether to admit or exclude evidence. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 320 (Minn. App. 2015), *review denied* (Minn. July 21, 2015). A court abuses its discretion if it improperly applies the law. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012).

Except as otherwise provided by statute or by the Minnesota Rules of Juvenile Protection Procedure, in a juvenile-protection matter, a 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; *see* Minn. R. Juv. Prot. P. 3.02, subds. 2, 3 (addressing exceptions to this rule); *see also* Minn. Stat. § 260C.165 (2016) (addressing evidence admissible in addition to that admissible under the rules of evidence). Relevant evidence is generally admissible. Minn. R. Evid. 402. But relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Minn. R. Evid. 403. And character evidence "is not admissible for the purpose of proving action in conformity therewith," but may be admitted to establish a pattern of behavior. Minn. R. Evid. 404; *see D.L.D.*, 865 N.W.2d at 321 (concluding that a district court did not err by admitting evidence that was used to establish a parent's pattern of action).

Here, the district court admitted H.C.'s testimony, as well as the testimony and reports of Shore and Olson. This evidence included information about appellant's parenting of the two children she shares with H.C. Because the evidence concerning appellant's parenting of her children with H.C. appears to have been admitted for the purpose of establishing the manner in which appellant parented F.W., it is inadmissible character evidence.

This court will grant a new trial on the basis of an improper evidentiary ruling only if the appellant demonstrates prejudicial error. *J.K.T.*, 814 N.W.2d at 93. "An evidentiary error is not prejudicial if the record contains other evidence that is sufficient to support the

findings." *Id.* Here, the district court did not substantially rely on the erroneously admitted evidence.

The district court made several findings based upon the testimony and reports of H.C., Shore, and Olson. First, the district court found:

> 1. [Appellant] and [H.C.] were married in 2002 and were divorced in 2012. The divorce decree provided that [appellant] and H.C. would have joint legal and physical custody of their two children . . . with equal parenting time.
>
> . . . .
>
> 5. On August 13, 2015, [a] Referee . . . issued a temporary order in the family court matter involving [appellant] and [H.C.]. The Order awards [H.C.] temporary sole legal and physical custody of [their children]. The Order provides [appellant] with parenting time twice a week, supervised at a visitation center, plus twice weekly fifteen minute Skype calls with each child.

Minnesota Rule of Juvenile Protection Procedure 3.02, subdivision 3, permits a court to take judicial notice of findings of fact and court orders in any proceeding in any other court file involving the child or the child's parent or legal guardian. Because the district court was authorized to take judicial notice of this evidence, appellant could not have been unduly prejudiced by these findings.

The district court also found:

> 6. . . . [T]he reports of Matthew Shore, parenting time evaluator, and Ramona Olson, Guardian ad Litem appointed to the family court custody matter . . . largely serve as the basis for [the] Referee['s] . . . Order. Both reports are highly critical of [appellant's] actions as a co-parent . . . . Both reports offer lengthy and detailed examples of appellant's extreme actions in alienating [the children] from their father, contrary to their best interests. Importantly for this case, both reports describe

> a pattern of behavior on [appellant's] part whereby she actively and aggressively distorts reality, particularly to third party professionals whose job it is to support both herself and her children and to keep them safe and healthy.

Because character evidence may be admitted to establish a pattern of action, Shore's and Olson's reports were admissible for the purpose of establishing appellant's pattern of distorting reality. *See D.L.D.*, 865 N.W.2d at 321 (concluding that a district court did not err by admitting evidence used to establish a parent's pattern of action). However, the district court's finding that the reports were highly critical of appellant's actions as a co-parent and that they detailed how appellant alienated the children from their father is based on inadmissible character evidence.

The remainder of the district court's findings are supported by other evidence. Because the properly admitted evidence clearly and convincingly shows that F.W. was in need of protection or services, the error in admitting the character evidence was not prejudicial. Appellant is not entitled to a new trial.

III. Reunification

Appellant argues that the district court erred by denying her requests for reunification. "Once a child alleged to be in need of protection or services is under the court's jurisdiction, the court shall ensure that reasonable efforts . . . by the social services agency are made to . . . reunite the child with the child's family at the earliest possible time." Minn. Stat. § 260.012(a) (2016). F.W. was under the district court's jurisdiction in December 2015. From this time, the district court had an obligation to ensure that reasonable efforts were made to reunite F.W. with appellant at the earliest time possible.

Appellant argues that the district court failed to reunite F.W. with her "at the earliest possible time" and asks us to interpret this statutory phrase. Minn. Stat. § 260.012(a). "In determining reasonable efforts to be made with respect to a child and in making those reasonable efforts, the child's best interests, health, and safety must be of paramount concern." *Id.*; *see also* Minn. Stat. § 260C.001, subd. 2 (2016) (providing that the health, safety, and best interests of the child are paramount). Although a child is to be reunited with his family "at the earliest possible time," it is proper to continue a child's out-of-home placement for the child's best interests, health, and safety.

The district court ordered RCCHSD to assume emergency protective care of F.W. because of the risk of imminent physical damage or harm to F.W. and denied appellant's motion for reunification in November 2016 because it determined that appellant's ability to protect F.W. remained an issue to be determined at trial. By November 2016, the district court had received evidence showing that F.W. suffered abuse and that appellant failed to recognize the abuse and take corrective action. We cannot say that the district court erred by failing to reunify F.W. with appellant by October 2016 because appellant's possible failure to protect F.W. presented a serious risk to F.W.'s best interests, health, and safety.

Affirmed.