STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0258

In the Matter of the Welfare of the Children of:
B. C., S. L. W., Sr., C. J. L., J. L. L., R. J. M., and D. M. B.,
Parents.

Filed June 19, 2017
Affirmed
Peterson, Judge

Sherburne County District Court
File No. 71-JV-16-308

Thomas W. Richards, Buffalo, Minnesota (for the children)

Lisa Ann Rutland, Rutland Law PLLC, Princeton, Minnesota (for appellant B.C., mother)

Rhonda Magnussen, Rhonda J. Magnuson LLC, Elk River, Minnesota (for S.L.W., Sr., father)

Milana Tolins, Minneapolis, Minnesota (for C.J.L., father)

Kathleen A. Heaney, Sherburne County Attorney, Tracy Jean Harris, Assistant County Attorney, Elk River, Minnesota (for Sherburne County)

Traci Luniewski, Monticello, Minnesota (guardian ad litem)

Considered and decided by Connolly, Presiding Judge; Peterson, Judge; and Smith, Tracy M., Judge.

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

PETERSON, Judge

In this appeal from an order that adjudicated children in need of protection or services (CHIPS), appellant-mother argues that (1) the district court erroneously found that clear and convincing evidence supports the CHIPS determination; (2) the maltreatment investigation was inadequate to support the CHIPS determination; (3) respondent-county failed to offer adequate support services; and (4) newly discovered evidence undermines the credibility of child witnesses. We affirm.

FACTS

Appellant-mother B.C. is the biological parent of six of the seven children who are the subjects of this CHIPS proceeding; S.L.W., Sr. is the biological parent of two of the seven children.[1] The seven children are J.Z.S., born in 2001; Anj.N.C., born in 2003;[2] K.D.S., born in 2003; A.N.C., born in 2005; K.J.L., born in 2008; C.A.C., born in 2009; and A.B.C., born in 2011.

Appellant has a history of child-protection involvement with her six children. Soon after the birth of A.B.C., in 2011, the six children were placed out of home after appellant admitted that they were in need of protection or services, but by November of that year, they were all returned to appellant's home. Appellant pleaded guilty to gross misdemeanor

[1] Appellant and S.L.W., Sr. are referred to collectively as "parents."

[2] Anj.N.C.'s status is not considered in this appeal because S.L.W., Sr. voluntarily consented to the termination of his parental rights to Anj.N.C. before the CHIPS hearing, and Anj.N.C.'s biological mother is deceased. The district court transferred Anj.N.C.'s custody to the Commissioner of the Minnesota Department of Human Services at the time of the CHIPS adjudication.

malicious punishment of a child in 2011 for, according to her, backhanding J.Z.S. in the mouth. Appellant and her children participated in therapy in 2011.

After the family, which by then included S.L.W., Sr. and Anj.N.C.,[3] moved to Sherburne County in 2015, there were at least three child-protection intakes concerning alleged physical abuse, which resulted in two investigations. Although the children claimed that they were safe in the home in 2015 and the parents denied physically abusing the children, respondent Sherburne County Health and Human Services (the county) knew that "in the past . . . the children [were] instructed not to be truthful with professionals." After an incident in December 2015, the county directed, as part of a safety plan, that the parents not physically punish the children.

On May 15, 2016, when the two oldest children, J.Z.S. and Anj.N.C., were discovered talking late at night after they had gone to bed, S.L.W., Sr. slapped Anj.N.C. and threatened to "whoop"[4] her. The next morning, appellant took Anj.N.C. to the doctor to have her tested for sexually transmitted diseases and pregnancy. On that day, the county also received a maltreatment report regarding all seven children that alleged slapping of Anj.N.C. by S.L.W., Sr., and included general allegations of physical and emotional abuse of all the children by both parents.

[3]It is unclear from the CHIPS decision when S.L.W., Sr. and Anj.N.C. began living with the family, but S.L.W., Sr. is the father of A.B.C., who was born to appellant in 2011. The district court found that during the 2015-16 school year, appellant and S.L.W., Sr. lived with the children.

[4]The guardian ad litem asked the children for the meaning of "whooping," and they said it meant "being physically harmed or spanked or injured." J.Z.S. also told the guardian ad litem that this included being struck with a belt.

A county social worker, Julie Mlsna, began an investigation by interviewing J.Z.S. individually at school on May 16; afterwards, she interviewed the six school-age children together. Police interviewed the six school-age children on May 17, and the children described physical abuse, verbal abuse, and injuries at the hands of both parents, and fear of punishment if they talked to authorities about the abuse. The children were placed on a 72-hour police hold that day.

A child-protection social worker, Allison Olmscheid, met with the parents on May 18, 2016; they denied abusing the children and accused the children of lying. According to Olmscheid, S.L.W., Sr. "stated he got his 'ass beat' as a child and no one ever whined to the government about it." Olmscheid later testified that "there were 28 child maltreatment allegations in this case" and that all of the children later stated that they wished to remain in foster care rather than go back to live with their parents, which was "unusual." Olmscheid testified that the county opened an investigation in December 2015 after it was noticed that one of the children had a scar or scratch on her collarbone that appellant reportedly caused. The amended petition alleged statutory bases for a CHIPS adjudication under Minn. Stat. § 260C.007, subd. 6(2), (8), and (9) (2014).

The district court issued an emergency protective-care order that upheld the children's out-of-home placement until the district court could hold a hearing on the CHIPS petition. Following an admit/deny hearing on May 24, 2016, the district court ruled that the county had established a prima facie showing that the children were CHIPS, granted the county's motion "for a protective order to withhold the identification of the foster

parents from the parents," and ordered supervised visitation. Visitation was later suspended in June upon the advice of the children's therapist.

Mlsna individually interviewed J.Z.S., K.D.S., and K.J.L. on June 24, 2016, and interviewed Anj.N.C. and A.N.C. on July 26, 2016. The children reported numerous instances of their parents' physical abuse and other cruel practices, such as being punched for "allowing a book to fall off a bed" or being "forced to stand with a penny on their nose and 'whooped' if it fell off." On September 28, 2016, S.L.W., Sr. told a county social worker that he "slapped the f—k out of [Anj.N.C.] and would do it again."

During the four-day CHIPS hearing, the district court heard testimony from appellant, the three oldest children, county social workers, a guardian ad litem, foster parents, and a school principal and received other documentary evidence pertaining to the family. The three oldest children testified in chambers about the "whoopings" they received from their parents, sometimes with objects such as belts, for minor perceived infractions; the district court found their testimony credible.[5] The district court also received evidence pertaining to the children's mental health and school performance; most of the children have mental-health issues, and five have been diagnosed with post-traumatic stress disorder. The district court specifically found that "[t]he children were regularly confined to their rooms . . . and consequently have failed to develop necessary skills for children their age." The district court found that appellant has been diagnosed with post-

[5]Olmscheid testified that some of the children felt such heightened anxiety about encountering their parents in court that they vomited, feigned illness, or were unable to sleep.

traumatic stress disorder and personality disorders, that she "has a sense of entitlement and lacks empathy from having hurt others," and that she "has clinically significant difficulties in her interpersonal, social, and occupational functioning." The guardian ad litem "opined [that] adjudicating the children CHIPS would be in their best interest."

The district court adjudicated the children CHIPS, ruling that there was clear and convincing evidence that the children were victims of physical and emotional abuse, Minn. Stat. § 260C.007, subd. 6(2), that appellant is an "abusive, unremorseful, and unstable mother" who "is unable to provide proper parental care under" Minn. Sat. § 260C.07, subd. 6(8), and that the family "household is a dangerous environment unfit for children" as defined in Minn. Stat. § 260C.007, subd. 6(8). The district court listed the numerous services that had been offered to the family, including 14 specific services that had been offered after the children's 2016 out-of-home placement.

Appellant moved for a new trial on January 23, 2017, arguing that new evidence established that, contrary to their testimony at the CHIPS hearing, J.Z.S. and Anj.N.C. had inappropriate sexual contact, which created questions of credibility and undue influence of J.Z.S. and Anj.N.C. over the younger children. In response, the county stated that it had "learned through interviews with the children that some of them, though not all, engaged in sexual behavior with one another . . . when the parents were not home and when isolated in their bedrooms." But the county argued that this information was "inconsequential to the Court's findings, conclusions, and order" in the CHIPS matter, did not excuse appellant's conduct, and did not warrant a new trial under Minn. R. Juv. Prot. P. 45. The district court denied appellant's motion for a new trial. This appeal followed.

D E C I S I O N

I.

Appellant argues that the CHIPS adjudication as to her six biological children is not supported by clear and convincing evidence. There is a general presumption "that a natural parent is a fit and suitable person to be entrusted with the care of his child and that it is ordinarily in the best interest of a child to be in the custody of his natural parent." *In re Welfare of C.K.*, 426 N.W.2d 842, 847 (Minn. 1988) (quotation omitted). Before a child is adjudicated CHIPS, the district court must determine by clear and convincing evidence that there is at least one statutory ground for making a CHIPS determination. Minn. Stat. § 260C.007, subd. 6 (2014) (listing 16 permissible statutory CHIPS grounds); 260C.163, subd. 1(a) (2014) (stating that CHIPS allegations "must be proved by clear and convincing evidence").

> Findings in a CHIPS proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence. Under the clearly erroneous portion of this court's review of the district court's findings, a district court's individual fact-findings will not be set aside unless the review of the entire record leaves the court with the definite and firm conviction that a mistake has been made.

In re Welfare of B.A.B., 572 N.W.2d 776, 778 (Minn. 1998) (citation and quotations omitted).

While the reviewing court will closely inquire into the sufficiency of the evidence to determine whether the evidence is clear and convincing, *id.*, it is also "bound by a very deferential standard of review." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (Minn. App. 2009). The reviewing court must be mindful that the district 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. In the absence of a clear abuse of discretion, the action of the [district] court must be affirmed." *Id.* (quotation omitted).

Minn. Stat. § 260C.007, subd. 6(2), provides that a child is in need of protection or services if the child

> (i) has been a victim of physical or sexual abuse as defined in section 626.556, subdivision 2, (ii) resides with or has resided with a victim of child abuse as defined in subdivision 5 or domestic child abuse as defined in subdivision 13, (iii) resides with or would reside with a perpetrator of domestic child abuse as defined in subdivision 13 or child abuse as defined in subdivision 5 or 13, or (iv) is a victim of emotional maltreatment as defined in subdivision 15.

"Physical abuse" is defined broadly to include "any physical injury, mental injury, or threatened injury." Minn. Stat. § 626.556, subd. 2(k) (2014). "Child abuse" means an act that involves a minor victim and constitutes one of several specific criminal offenses, including assault offenses, criminal-sexual-conduct offenses, malicious punishment of a child, and neglect or endangerment of a child. Minn. Stat. § 260C.007, subd. 5 (2014). "Domestic child abuse" is defined to include "any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means." Minn. Stat. § 260C.007, subd. 13(1) (2014). "Emotional maltreatment" is defined as "the consistent, deliberate infliction of mental harm on a child by a person responsible for the child's care, that has an observable, sustained, and adverse effect on the child's physical, mental or emotional development." Minn. Stat. § 260C.007, subd. 15

(2014). "Emotional maltreatment" does not include reasonable training or discipline administered by the person responsible for the child's care. *Id*.

Relative to the CHIPS determination under section 260C.007, subd. 6(2), the district court found that appellant

> physically and emotionally injured her 6 children by "whooping" them with a belt and her hand. The discipline dispatched by [appellant] was cruel, immoderate, and beyond reasonable. [Appellant's] discipline of the children was not reasonably meted to restrain or correct them. Three of the children credibly testified to this abuse under oath, and credible statements from all the children indicate both [appellant] and [S.L.W., Sr.] "whooped" the children. . . . The children have maintained their descriptions of "whoopings" despite being separated from each other and in some cases wanting to go home. [Appellant's] conflicting testimony was evasive and not credible.

These findings accurately reflect the evidence that supports the CHIPS adjudication under section 260C.007, subd. 6(2). Contrary to appellant's argument that the record does not include evidence of physical injuries, the children, their school principal, and the guardian ad litem testified that some of the children had bruises and scars caused by appellant's conduct. The children also testified that they were repeatedly assaulted by their parents and placed in fear of physical abuse. Appellant's emotional maltreatment of the children is also proved by the children's testimony and by the testimony of the four foster parents who observed the children's odd conduct when they first arrived in foster care, and is borne out by the "various mental disorders" that the children now experience.[6]

[6]The district court found that J.Z.S. "has adjustment disorder and mixed disturbance of emotions," Anj.N.C. "has [PTSD] based on her history of abuse, . . . impaired functioning, low to moderate social skills, and poor eye contact," A.N.C. "has PTSD and is hesitant to

While there was evidence offered at the hearing that contradicted these findings, the district court made definitive credibility determinations, and the testimony that the court found credible satisfied the clear-and-convincing-evidence standard. *See S.S.W.*, 767 N.W.2d at 733 (providing that in juvenile-protection matters, the district court, as fact-finder, is given "considerable deference" because the court "is in a superior position to assess the credibility of witnesses" (quotation omitted)).

In addition, the restrictive definition of "physical abuse" urged by appellant is not supported in the caselaw. In *In re Welfare of Children of N.F.*, the supreme court rejected a narrow definition of those words, based in part on the remedial purpose of the CHIPS statute, and concluded that "physical abuse" includes not only conduct that would constitute malicious punishment under the criminal law, but also conduct that would merely constitute an assault. 749 N.W.2d 802, 808 (Minn. 2008). Further, while appellant draws attention to the fact that the children's statements became more revealing after they were taken from appellant's home, this occurrence does not compel a finding that the children were fabricating their stories; the record shows that the children were afraid of retribution from their parents if they told the truth, which explains their initial reluctance to disclose the abuse. Taken as a whole, the record contains clear and convincing evidence that supports the district court's CHIPS adjudication on this statutory ground. Because we

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build a relationship with her therapist," K.D.S. "has PTSD and stated he thinks we will die if he goes home," C.A.C. "has PTSD and experienced nightmares after visits with her parents," A.B.C. "has PTSD and experienced crying and nightmares after visiting her parents."

affirm on this ground, we do not separately address the other statutory grounds for the CHIPS adjudication.

II.

Appellant challenges the adequacy of the investigation conducted by the county and alleges that the county failed to conduct "an accurate, complete, and professional child maltreatment investigation." Mlsna, the social worker, individually interviewed J.Z.S. at school on May 16 and then interviewed all of the school-age children immediately after J.Z.S.'s interview. During her testimony, Mlsna stated that she was aware that the county had conducted an investigation of the family in December 2015 regarding an allegation of physical maltreatment, and, at that time, Olmscheid recommended as a home safety measure that "there would be no physical discipline in the home." She also testified that law enforcement made the decision to remove the children from the home and that she believed the children "would have been in jeopardy if they had been returned home that day." Mlsna stated that the scope of her investigation did not include interviewing the children's teachers or neighbors because it was not necessary and could be harmful to the family, and she did not obtain either police reports or the medical report from Anj.N.C.'s May 16 doctor visit. Mlsna interviewed K.J.L., K.D.S., and J.Z.S. a second time on June 24, 2016, at their request.

Minn. Stat. § 626.556, subd. 10 (2014), describes the duties of welfare agencies with regard to child-maltreatment investigations. *See also* Minn. R. 9560.0212 (2015) (stating that "parts 9560.0210 to 9560.0234 govern the administration and provision of child protective services by local social service agencies"). The welfare agency must

immediately begin an investigation upon receiving a report of "substantial child endangerment or a serious threat to the child's safety." Minn. Stat. § 626.556, subd. 10(a)(2); *see* Minn. R. 9560.0220, subp. 1 (describing local agency's required response to a report of child maltreatment). The welfare agency "shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed," including "when relevant, information with regard to the person reporting the alleged maltreatment . . .; the child allegedly being maltreated; the alleged offender; . . . and other collateral sources having relevant information related to the alleged maltreatment." Minn. Stat. § 626.556, subd. 10; *see* Minn. R. 9560.0220, subps. 1-5 (2015) (describing similar procedures for a child-maltreatment investigation within a family unit). "Collateral information includes, when relevant: . . . interviews with the child's caretakers, including the child's parent, guardian, foster parent, child care provider, teachers, counselors, family members, relatives, and other persons who may have knowledge regarding the alleged maltreatment . . . of the child." Minn. Stat. § 626.556, subd. 10(h)(3); Minn. R. 9560.0220, subp. 5 (stating that "[w]hen necessary to make the determination [whether maltreatment has occurred], the local agency shall interview other persons whom the agency believes may have knowledge of the alleged maltreatment"). The standard of proof for child-maltreatment investigations requires the agency to "document[] conditions during the . . . investigation sufficient to cause a child protection worker . . . to conclude that a child is at significant risk of maltreatment if protective intervention is not provided and that the individuals responsible for the child's care have not taken or are not likely to take actions to protect the child from maltreatment or risk of maltreatment." Minn. Stat.

§ 626.556 at subd. 10e(g); *see* Minn. R. 9560.0220, subp. 6 (2015) (requiring proof by "a preponderance of evidence that a child is a victim of maltreatment"). "[P]reponderance of the evidence means that it must be established by a greater weight of the evidence. It must be of a greater or more convincing effect and lead you to believe that it is more likely that the claim is true than not true." *State v. Maley*, 714 N.W.2d 708, 712 (Minn. 2006) (quotation omitted).

We agree with appellant that the county could have conducted a broader maltreatment investigation. The county had a duty to conduct interviews to collect relevant information related to the abuse allegations, but it interviewed only the immediate family members. As noted by appellant, other relevant information could have included police reports, medical reports, and interviews of others with whom the family had contact, such as teachers and neighbors. The history of child-protection involvement with the family does not excuse the need to substantiate current allegations of abuse.

However, although the county could have conducted a more thorough investigation, this deficiency was immaterial to the adequacy of the information that resulted in the need for protective services due to the children's maltreatment and did not bear on the admission of evidence at the CHIPS hearing or on the necessity for clear-and-convincing evidence to support the district court's CHIPS adjudication. At the investigatory stage of a CHIPS matter, the proper standard of proof is the preponderance-of-evidence standard, rather than the clear-and-convincing-evidence standard that applies to the ultimate CHIPS adjudication following a hearing on the merits. Minn. Stat. § 626.556, subd. 10e(g); Minn. R. 9560.0220, subp. 6.

During J.Z.S.'s first interview with Mlsna, he said that when he and Anj.N.C. were discovered talking upstairs at home after they were supposed to be in bed, they were ordered to go to S.L.W., Sr.'s room, where S.L.W., Sr. "slapped" Anj.N.C. "a few times" and threatened to "whoop" her "[w]ith a belt" if she didn't stop crying. When asked about other instances of the children being punished by being struck with a belt, J.Z.S. reported that both parents did so and stated that a few months earlier S.L.W., Sr. had punished K.D.S. with a belt because he "had [left] a wet rag on the floor." J.Z.S. also said that S.L.W., Sr. had punished K.D.S. with the belt "a lot," which "left bruises on his back and arms." J.Z.S. further stated that the parents were "equal" in meting out punishment, that he did not "feel safe" at home any more, and that they were "all mistreated at times."

During their May 16 group interview following J.Z.S.'s individual interview, the children reported feeling unsafe and receiving "whoopings" that sometimes left bruises. One child said that when appellant got mad, she went "wild," and ran around "whoopin[g] people." The children also described a very restrictive home life where they were allowed to play outside, but could not have friends over, go to sleepovers or birthday parties, and most, if not all, said they did not want to go home. In May of 2016, the three oldest children were 12, 12, and 14 years of age and sufficiently competent to provide information about the events occurring in their home. *See* Minn. Sat. § 595.02, subd. 1(n) (2016) (stating that "[a] child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined"). Although the group interview of the children and some use of leading questions by Mlsna were less than ideal, the children's statements corroborated J.Z.S.'s

statements, which alone supported the county's determination to intervene. The information that the county gathered in its investigation was sufficient to establish by a preponderance of evidence that the children were at significant risk of maltreatment if protective intervention was not provided.

III.

Appellant argues that the county "failed to provide family support and preservation services to prevent placement or make efforts to reunify the children at the earliest possible time." Once a child is alleged to be CHIPS, the county must make "reasonable efforts. . . to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time." Minn. Stat. § 260.012(a) (2014); *see* Minn. Stat. § 260.012(d) (2014) (defining reasonable efforts to include development and implementation of a safety plan).

Appellant's arguments with regard to the services provided by the county assume that the children were not in danger of maltreatment while living at the family home in May 2016. At that time, there was a safety plan in place that required no physical punishment in the home, but J.Z.S. and the other children alleged that S.L.W., Sr. struck and threatened one of the children, and that both parents had physically and emotionally abused the children for a long time. Based on these allegations, which suggested that the safety plan had failed, it would have been unreasonable for the county to allow the children to remain in the home, and law enforcement made the decision to remove them. Regarding reunification efforts, appellant denied that the abuse had occurred and rejected the diagnoses of her mental illness, despite being offered services by the county to address

these concerns. The record does not show that the county failed to make reasonable efforts to either prevent removal and placement of the children or to reunite the family. The district court's findings list numerous efforts by the county to address the concerns of this family.

IV.

"The decision to grant a new trial rests within the district court's discretion, and will not be overturned absent an abuse of discretion." *Poston v. Colestock*, 540 N.W.2d 92, 93 (Minn. App. 1995), *review denied* (Minn. Jan. 25, 1996). Appellant moved for a new trial following the CHIPS adjudication, arguing that there was new evidence that some of the children had had sexual contact with each other. Appellant sought a new trial on the grounds of newly discovered evidence and in the interests of justice. Minn. R. Juv. Prot. P. 45.04(e), (h). The district court denied the motion, ruling that the weight of evidence showing the children in need of protective services was "overwhelming," that appellant did not use due diligence in discovering the new evidence, which occurred while the children were in appellant's care, and that the interests of justice did not require a new trial.

Appellant now argues that the district court "failed to consider how the newly discovered material evidence raises the question of J.Z.S. and Anj.N.C.'s credibility and their influence over the younger siblings." Because appellant does not address this issue in the body of her brief, we deem it waived. *See State v. Palmer*, 803 N.W.2d 727, 741 (Minn. 2011) (ruling that appellant waived ineffective assistance of trial counsel claims by failing to include in the appellate brief "argument or citation to legal authority in support of the allegations" and prejudicial error was not obvious); *State v. Krosch*, 642 N.W.2d

713, 719 (Minn. 2002) (deeming issue waived when a party made no argument and cited no legal authority to support the claim). We also note that had the county been made aware of sexual contact between the children earlier, that information would have supplemented the record that already showed a strong basis for county intervention.

Affirmed.