STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0783

In the Matter of the Welfare of the Child of:
T. R. E. and C. M. F., Parents.

Filed October 1, 2018
Affirmed
Bjorkman, Judge

Sherburne County District Court
File No. 71-JV-17-530

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Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant-father challenges the district court's adjudication of his child as needing protection and services (CHIPS) and denial of his petition for permanent legal and physical custody of the child. We affirm.

FACTS

T.R.E. tested positive for controlled substances while pregnant and gave birth to J.R.F. on August 23, 2017. T.R.E.'s parental rights to two other children had been involuntarily terminated, and she voluntarily agreed to terminate her rights to J.R.F. Respondent Sherburne County Health & Human Services (the county) took immediate custody of the child. The district court placed the child in emergency protective care on August 28.

Appellant-father C.M.F. came to the attention of the county on the date of the child's birth because he was with mother at the hospital when two child-protection workers arrived to interview her. Father was extremely belligerent during the encounter, directed mother not to answer the workers' questions, swore at them, told them to "shut up," and accused them of trying to "ruin their family."[1] Eventually, five or six law-enforcement officers escorted father out of the hospital. Two days later, father repeated this hostile behavior when a child-protection worker came to mother's residence to talk with her, this time escorted by law enforcement. Father was "uncooperative and intimidating," stood over the child-protection worker, and again directed mother not to speak.

As the county made further inquiries about father, the concerns broadened to include chemical dependency and parenting aptitude. Father signed a voluntary out-of-home placement plan in September. The plan required him to be a safe and sober caregiver, commit to long-term involvement with the child, meet the child's needs, maintain safe and

[1] The county was initially unaware of father's biological relationship to J.R.F. but learned on August 25 that father had signed a recognition of parentage.

chemical-free housing, and demonstrate mood stability. Father struggled with all aspects of his plan. He gave inconsistent accounts of his drug use, stating at different times that he had been "clean" for as few as three months or up to a year. Mother reported to a child-protection worker that she and father used methamphetamine together while she was pregnant and that he had been sober only from the date of the child's birth. Although father agreed to random drug and alcohol testing, he was often "uncooperative with staff and testing procedures," and was removed from the testing program after he threatened to "punch a staff member in the face." He resisted suggestions made by child-protection workers during visits with the child despite the workers' assessments that he was "naïve and inexperienced" and unaware of parenting cues or child-development markers. The workers described his behavior during visitation as "argumentative and demanding," "insulting and disrespectful," and "angry." The child's maternal grandmother refused to be considered as a placement option because she was afraid of father.

The county filed a CHIPS petition as to father, alleging that the child was "without proper parental care because of [father's] emotional, mental, or physical disability, or state of immaturity." Minn. Stat. § 260C.007, subd. 6(8) (2016). Evidence adduced during the court trial that ended on March 23, 2018, validated the county's concerns. Father continued to test positive for alcohol use during the fall of 2017, refused to submit to hair-follicle testing, and was arrested in December 2017 after attacking his grandfather. On that occasion, father became angry, shattered a plate and a glass, and grabbed his grandfather "by the neck and pushed him against a wall and onto the ground." His grandfather described other altercations with father, father's attempts to control his daily activities, and

his fear of father. At the time of his arrest, father was in a pretrial diversion program for a "drug-related crime." And although father testified that he would do anything for the child, the district court found father's refusal to engage in parenting education contradicted this claim. The district court determined that the child was in need of protection or services and that it was in the child's best interests for the county to retain temporary legal custody of the child. The district court also denied father's separate petition to obtain custody of the child. Father appeals.

D E C I S I O N

Before adjudicating a child CHIPS, a district court must determine by clear and convincing evidence that at least one statutory ground exists for making that determination. Minn. Stat. §§ 260C.007, subd. 6 (enumerating statutory grounds for CHIPS determinations), .163, subd. 1(a) (requiring CHIPS allegations to "be proved by clear and convincing evidence") (2016). We will not reverse CHIPS findings unless they are "clearly erroneous or unsupported by substantial evidence," leaving us "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. App. 1998) (quotation omitted). And our review of a CHIPS adjudication is "very deferential," requiring affirmance absent a "clear abuse of discretion." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (Minn. App. 2009) (quotation omitted).

Father makes three general challenges to the CHIPS adjudication, arguing: (1) he should have been granted custody upon the child's birth, (2) the county failed to take reasonable steps to prevent the child's out-of-home placement, and (3) the record and

district court findings do not support a CHIPS adjudication. We address each argument in turn.

I. The county's failure to immediately place the child with father does not require reversal of the CHIPS adjudication.

Relying on the presumption that parents are fit to raise their children, father first argues that because he admitted at the hospital that he is the child's father and signed the recognition of parentage two days later, he should have immediately gained custody of the child. *See In re Welfare of C.K.*, 426 N.W.2d 842, 847 (Minn. 1988) (stating that "a natural parent is a fit and suitable person to be entrusted with the care of his child and . . . it is ordinarily in the best interest of a child to be in the custody of his natural parent" (quotation omitted)). This argument is unavailing for three reasons.

First, the dispositive issue in CHIPS cases is whether clear and convincing evidence shows the child needs protection or services at the time of trial. *See* Minn. Stat. § 260C.007, subd. 6 (defining a child as CHIPS with reference to circumstances that presently exist); *S.S.W.*, 767 N.W.2d at 732 (stating that CHIPS inquiry is focused on whether a child is "presently" at risk). Evidence of the child's initial placement and the reasons behind it have limited relevance to the CHIPS adjudication. Second, as noted above, the county did not know father was biologically related to the child at the time of the child's birth. The county had no duty to recognize father as the child's parent until he satisfied specific legal requirements. *See* Minn. Stat. § 257.54 (2016) (defining how parentage to a child is established). Third, the district court found that father's belligerent behavior on August 23 and August 25 raised serious concerns about his ability to safely care for the child. These

circumstances rebut the presumption of parental fitness and amply support the district court's determination at the emergency protective-care hearing that the child "would be endangered if returned to the care of one or both of the parents."

II. The county's failure to identify father as a placement option before the child's birth does not require reversal of the CHIPS adjudication.

Father next asserts that the county failed in its duty to prevent the child's placement because it was aware as early as August 11 that he could be the child's biological father but took no action to identify him as a possible placement option. He points to the general requirement that a social services agency make "reasonable efforts . . . 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) (2016). "Reasonable efforts to prevent placement" include "working with the family to develop and implement a safety plan." *Id.* (d)(1) (2016).

The child-protection worker assigned to the case on August 23 testified that the county decided before the child's birth that the child would immediately be placed in foster care. The worker acknowledged that an August 11 case note concerning mother's report of maltreatment suggested that father could be the child's parent. Although the assigned worker was not aware of this note on the date of the child's birth, given the district court's serious concerns arising from father's behavior that same date, we are not persuaded that his earlier identification would have altered the out-of-home placement decision. Indeed, father's September case plan required him to accomplish five goals before the child could be placed with him. On this record, we are persuaded that the county's diligence and

actions were reasonable. And we note this argument has little relevance given the district court's duty to examine the evidence as it existed at the time of the CHIPS trial.

III. Clear and convincing evidence supports the CHIPS adjudication.

Father broadly challenges the CHIPS adjudication, questioning individual findings of fact and whether adequate evidence supports the determination that the child lacks proper care because of father's incapacity or immaturity. *See* Minn. Stat. § 260C.163, subd. 1(a) (requiring CHIPS allegations to be proved based on "clear and convincing evidence"); *B.A.B.*, 572 N.W.2d at 778 (requiring CHIPS findings to be supported by substantial evidence). We are not persuaded.

First, father contests numerous individual factual findings contained in the CHIPS order. Collectively, these findings are supported by the evidence, reflect the district court's credibility determinations, and to the extent error occurred, do not undermine the adequacy of the evidence supporting the CHIPS adjudication. As an example, father asserts the testimony of child-protection workers contain inadmissible hearsay as to statements he made at the hospital on August 23, the maternal grandmother's statement that she was afraid of father, and statements regarding father's parenting skills and conduct during visits with the child. While a district court in a CHIPS proceeding "shall admit only evidence that would be admissible in a civil trial," Minn. Stat. § 260C.163, subd. 1(a), father did not object to the testimony, and it duplicated other unchallenged admissible evidence of similar import. *See Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 842 (Minn. App. 2017) (stating that "[a]n appealing party bears the burden of demonstrating that an evidentiary error resulted in prejudice," which is shown "if it might reasonably have influenced the fact-

finder and changed the result of the proceeding"); *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 93 (Minn. App. 2012) (stating that "[a]n evidentiary error is not prejudicial if the record contains other evidence that is sufficient to support the findings"). Grandmother's statements to workers that she fears father were strongly echoed in grandfather's trial testimony concerning the December 2017 assault and his general fear of father. To the extent that the district court chose to believe the testimony of witnesses who contradicted father's testimony, it was the court's responsibility as fact-finder to do so, and we will not alter its credibility determination. *See In re Welfare of C.J.W.J.*, 699 N.W.2d 328, 335 (Minn. App. 2005) ("[A]ppellate courts defer to the fact-finder's determinations regarding the weight and credibility of individual witnesses."). Based on our careful review of the record, we discern no clear error in the district court's CHIPS findings.

Second, father characterizes the record as inadequate to meet the clear-and-convincing-evidence standard required to sustain a CHIPS adjudication. The case was tried over three days and includes testimonial and documentary evidence from county staff, family members, law enforcement, and a guardian ad litem, all of which support the district court's CHIPS decision. Father parses out isolated statements made by a child-protection case manager to support his claim of parental competency. But the case manager testified to father's "pattern of aggressiveness" and unwillingness to acknowledge his "issues with mood management," his struggle with substance abuse, negative aspects of his relationship with mother, his inability to parent independently, and his unwillingness to cooperate with the county. This testimony, as well as other evidence produced at trial, constitutes clear and convincing evidence to support the CHIPS adjudication.

Finally, father argues that the district court erred by denying his custody petition, asserting that the county did not overcome the presumption of fitness that applies to all parents. *See C.K.*, 426 N.W.2d at 847 (setting forth presumption of parents' fitness). We disagree. When a child is found to be in need of protection or services, custody of the child may be transferred to nonparents. *See* Minn. Stat. § 260C.201, subd. 1(a)(2) (2016) (including custodial transfer of the child to "a child-placing agency" or "the responsible social services agency" among permissible CHIPS disposition options). Ample evidence supports the district court's CHIPS determination. Simply put, father needs a longer period of supervision and services before he can safely parent this young child.

Affirmed.