STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1146

In the Matter of the Welfare of the Child of: J. M. P. and A. S. L., Parents.

Filed December 31, 2018
Affirmed
Schellhas, Judge

Scott County District Court
File No. 70-JV-18-7771

Laura L. Schultz, Laura L. Schultz Law Office, Bloomington, Minnesota (for appellant A.S.L.)

Ronald Hocevar, Scott County Attorney, Bryce A.D. Ehrman, Todd O. Zettler, Assistant County Attorneys, Shakopee, Minnesota (for respondent county)

James P. Conway, Jaspers, Moriarty & Wetherille, P.A., Shakopee, Minnesota (for respondent J.M.P.)

Brian Moss, First District Public Defenders Office, Chaska, Minnesota (for child L.L.)

Christina Walters, First District Guardian Ad Litem Program, Chaska, Minnesota (Guardian Ad Litem)

Considered and decided by Reilly, Presiding Judge; Schellhas, Judge; and Florey, Judge.

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

SCHELLHAS, Judge

Appellant challenges the district court's order adjudicating his child a child in need of protection or services. We affirm.

FACTS

Appellant A.S.L. (father) and J.M.P. (mother) are the parents of L.L., born in August 2001. In October 2013, mother and father entered into an agreement regarding custody of L.L. Based on their agreement, the district court granted sole physical custody of L.L. to father, whose primary residence was in Texas, and granted joint legal custody to the parties. In April 2015, L.L. returned to Minnesota to live with mother, based on the parties' agreement that "[d]ue to extenuating circumstances, there must be a necessary, immediate change in the current living arrangements of [L.L.]."

In May 2018, respondent Scott County Health and Human Services (the county) petitioned to adjudicate L.L. a child in need of protection or services (CHIPS). After the district court scheduled a court trial for June 26, 2018, father submitted an ex parte email to the court, requesting permission to appear by telephone for future hearings because (1) he permanently resides in Texas; (2) he is "the sole wage earner for [his] household"; (3) he is the "primary caregiver for a fully physically disabled person"; and (4) it would be a "severe hardship" to attend multiple hearings in Minnesota. Following a pretrial hearing on June 14, the court ruled that father could not appear by phone but could appear in person or through counsel.

At the beginning of the scheduled CHIPS trial, father participated by telephone and court-appointed counsel appeared on his behalf. But the county moved to proceed against father by default due to his failure to appear in person at trial. Father's counsel objected to the county's motion and to the district court's decision disallowing father's telephone

testimony. Although the court offered to continue the trial to allow father to appear in person, father did not request a continuance, and the court ruled that the county therefore could proceed against father by default.

Mother admitted that L.L. was a child in need of protection or services under Minn. Stat. § 260C.007, subd. 6(4), (13) (2016), and then social worker Angela Gatz testified that the county became involved with L.L. in May 2017, after L.L. ran away from her mother's home and was placed on a 72-hour health-and-safety hold by law enforcement. Gatz also testified that in July 2017, the county became aware that L.L. was hospitalized due to an attempted suicide. According to Gatz, the county put in place mental-health services for L.L. but eventually discontinued them because "providers weren't able to get in touch with the family for ongoing appointments."

In August 2017, the county received a report that L.L. was hospitalized due to an "attempted overdose on a prescription medication." According to Gatz, the report indicated that mother had hit L.L. with a "cloth belt" and that L.L. had run away from home. Gatz testified that, as a result of the incident, L.L. was again placed on a 72-hour health-and-safety hold, and that the county again put in place mental-health services for her.

In April 2018, the county again became involved with L.L. after receiving a report that L.L.'s stepfather had abused her and that she had run away from home. According to Gatz, the county received a report that when L.L. returned home after curfew, her stepfather punched her, causing her to fall down. Gatz also testified that mother contradicted L.L.'s story by reporting that L.L.'s stepfather "accidentally shut the door on [L.L.]'s arm," but did not punch her. Following these events, L.L. was "again put on a 72-hour hold," and

Gatz began to "work with both parents in regards to potential placement options." Initially, father informed the county that he was not a placement option, but Gatz acknowledged that based on her subsequent conversations with father, he now "wants [L.L.] back in Texas with him." Gatz also testified that L.L. fears returning to father's home based on her claim of past physical abuse by both father and her stepmother. Based on mother's admissions and father's default to the CHIPS petition, the district court adjudicated L.L. a CHIPS under Minn. Stat. § 260C.007, subd. 6(4), (13).

This appeal follows.

D E C I S I O N

To adjudicate a child a CHIPS, a district court must conclude that at least one statutory basis in Minn. Stat. § 260C.007, subd. 6 (2018), exists and that 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). On appeal from a juvenile-protection order, this court reviews "the juvenile court's factual findings for clear error and its finding of a statutory basis for the order for abuse of discretion." *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), *review denied* (Minn. July 20, 2015). "Considerable deference is due to the district court's decision because a district court is in superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

A child may be adjudicated a CHIPS under Minn. Stat. § 260C.007, subd. 6(4), (13), if the child "is without the special care made necessary by a physical, mental, or emotional condition because the child's parent . . . is unable or unwilling to provide that care," or because the child "is a runaway." A CHIPS order "shall also set forth in writing . . . why

the best interests and safety of the child are served by the disposition and case plan ordered." Minn. Stat. § 260C.201, subd. 2(a)(1) (2018). And a CHIPS order must include a written explanation about "what alternative dispositions or services" the district court considered; the "appropriateness of the particular placement"; and "whether reasonable efforts to finalize the permanent plan for the child . . . were made," including reasonable efforts to locate any noncustodial or nonresident parent of the child and to assess such parent's ability to care for the child. *Id*., subd. 2(a)(2)–(4) (2018). Father challenges the CHIPS order, arguing that the district court failed to make the requisite findings under section 260C.201, subdivision 2(a)(1)–(4), failed to consider alternative dispositions of the child, including placing the child with him, and failed to transfer venue to Texas.

On direct appeal from a default judgment, our scope of review is limited to examining "whether the evidence on record supports the findings of fact and whether the findings support the conclusions of law set forth by the [district] court." *Nazar v. Nazar*, 505 N.W.2d 628, 633 (Minn. App. 1993), *review denied* (Minn. Oct. 28, 1993), *superseded by statute on other grounds*, Minn. Stat. § 518.551, subd. 5b(d) (1994); *see also Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 493 (Minn. App. 1995) ("There are only a limited number of issues that may be raised in a direct appeal from a default judgment. These include arguing that the plaintiff's complaint did not state a cause of action or that the relief granted was not justified by the complaint.").

Here, the district court concluded that L.L. was a child in need of protection or services. This conclusion is supported by the district court's findings that the "matter proceeded by default as to father," and that mother admitted the allegations in the CHIPS

petition that L.L. was in need of protection or services under section 260C.007, subdivision 6(4), (13). The court's conclusion is also supported by the findings that the county "made reasonable efforts to avoid the out of home placement of the child," that the county "is providing services to the family and has made reasonable efforts toward reunification," and that the CHIPS order is "the least restrictive and in the best interests of the child."

The record also supports the district court's findings. Gatz testified that after becoming involved with the family, the county provided individual therapy for L.L. to address her mental-health needs, but that the child is in need of protection or services because she "needs consistent mental-health care that is not being provided for her." Gatz also testified that she "reached out to multiple family members, including [father] as a placement option," but everyone, including father, "denied being a placement option." Moreover, the guardian ad litem testified that she believed that it was in L.L.'s "best interests" to be adjudicated a CHIPS "to assist her family and her with meeting her emotional and mental-health needs," and that if L.L. was not adjudicated a CHIPS, she was concerned that the child's mental-health "services would not continue." Although more extensive findings of fact would have been helpful, we cannot conclude that the district court abused its discretion by adjudicating L.L. a CHIPS.

Father also contends that because "there was a court order granting [him] sole physical custody of the child," the district court "should have" transferred venue to Texas. Although the remedy for improper venue is a change of venue, the failure to request a venue change waives that objection. *Rosnow v. Comm'r of Pub. Safety*, 444 N.W.2d 591, 592 (Minn. App. 1989), *review denied* (Minn. Oct. 13, 1989). The record here reflects that

father never requested a venue change to Texas. The issue therefore is not properly before us. Moreover, father concedes that venue is proper in Scott County because that is the county where L.L. was found. *See* Minn. Stat. § 260C.121, subd. 1 (2018) (stating that "[w]hen it is alleged that a child is in need of protection or services, venue may be in the county where the child is found"). Because L.L. was found in Scott County, making venue proper in that county under Minn. Stat. § 260C.121, subd. 1, the district court did not err by failing to transfer venue to Texas.

Finally, father argues that the district court abused its discretion by granting the county's motion to proceed by default under Minn. R. Juv. Prot. P. 18. We disagree. Rule 18, entitled "Default," provides that generally, in juvenile-protection matters, if a parent receives proper notice but "fails to appear" for a hearing or trial, "the [district] court may receive evidence in support of the petition or reschedule the hearing." Minn. R. Juv. Prot. P. 18.01. When a juvenile-protection matter proceeds despite the lack of an appearance by a parent, the court may file an order granting the relief sought in the petition as to that parent if the petition is proved by the applicable standard of proof. *Id*., 18.02; *see also In re Welfare of Children of Coats*, 633 N.W.2d 505, 510–12 (Minn. 2001) (addressing vacation of termination of parental rights by default). The rules of juvenile-protection procedure further provide that "[b]y agreement of the parties, or exceptional circumstances upon motion of a party or the county attorney, the court may hold hearings and take testimony by telephone or interactive video." Minn. R. Juv. Prot. P. 12.02. The comment to this rule states that the rule provides the district court "the opportunity, *in all but the*

most exceptional cases, to personally observe witnesses in order to effectively weigh credibility." *Id.*, 1999 advisory comm. cmt. (emphasis added).

The use of the word "may" in rules 18 and 12.02 demonstrates that the district court could exercise its discretion in deciding not to allow father to appear by telephone, and to grant the county's motion to proceed by default. *Cf.* Minn. Stat. § 645.44, subds. 1, 15 (2018) (stating that when used in a statute, "[m]ay is permissive" unless "another intention clearly appears"). Although father claimed that he was unable to travel to Minnesota to attend the CHIPS trial due to limited financial resources and because he needed to care for his disabled wife, the record reflects that father informed the court in a June 8, 2018 ex parte email that he did not attend a previous hearing on May 3 because he was "on [his] way to retrieve" L.L. from Minnesota. This email indicates that father had the ability and resources to travel to Minnesota for the CHIPS trial. And the record reflects that the district court was willing to continue the matter to allow father to attend the trial.

Because father was not present for the CHIPS trial and declined the district court's offer to attend court if the court continued the trial, and no exceptional circumstances warranted father's appearance by telephone, we conclude that the district court did not abuse its discretion by allowing the county to proceed against father by default as to the CHIPS petition.

Affirmed.