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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0198**

In the Matter of the Welfare of the Child of:
J. R. W., Parent.

**Filed August 16, 2021
Affirmed
Gaïtas, Judge**

Hennepin County District Court
File No. 27-JV-20-1425

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Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant-father challenges the district court's order adjudicating his child in need of protection and services (CHIPS). He claims the district court deprived him of a timely trial in violation of due process, made unsupported factual findings, and erroneously relied on three statutory grounds to conclude that adjudication was proper. We affirm.

FACTS

Appellant J.R.W. (father) has been the sole parent of J.W. (child), born in November 2003, since child was four years old.¹ Child was removed from father's care in March 2020 and placed in foster care with a relative. After a court trial, child was adjudicated in need of protection and services. Child is now 17 years old and remains in foster care under the district court's adjudication order. The relevant proceedings are summarized as follows.

In March 2020, Hennepin County Human Services and Public Health Department (the county) received five child-protection reports against father for educational neglect, inadequate provision of physical needs, physical abuse, and mental injury. The county filed a CHIPS petition on March 20, alleging that father unjustifiably prevented child from attending school, child "has been kicked out of the home several times," father disciplines child with physical force, and child "fears for her safety." The leading allegation, however, was that father physically abused child during an altercation that occurred three days before the petition was filed.

An emergency protective-care (EPC) hearing was held later that same day. The district court found that the county made a prima facie showing "that a juvenile protection matter exists" and that returning child to the home would be dangerous to her health, safety, or welfare. Consequently, the district court ordered child's removal from father's care and placement in a shelter pending a transfer into foster care with a relative. The district court

¹ Father assumed full custody when child was three years old, about one year before child's mother passed away.

granted father supervised visitation “at the child’s discretion.” Also, father agreed to comply with a voluntary case plan the county offered to him during the EPC hearing, which included various services: parenting education, domestic-violence programming, anger management counseling, and individual therapy for both father and child.

However, father did not comply with the case plan. Father also denied that child was in need of protection and services and requested a trial on that issue.

Following the EPC hearing, there were several pretrial hearings.² In May 2020, father requested a trial and the district court issued a pretrial order stating, “The Court is not yet prepared to set a trial in this matter due to the scheduling difficulties caused by the pandemic.” Two more pretrial hearings followed. Father maintained his request for a trial at each pretrial hearing. The district court addressed various interim conditions and continued the matter for trial.

Between October 2020 and late January 2021, the district court held a trial on the county’s CHIPS petition. At trial, several witnesses testified in support of the county’s petition, including child. Father also testified and called two witnesses who contested the county’s allegations.

The county’s case at trial focused on two theories: educational neglect and physical abuse. As to the educational-neglect claim, the county alleged that father withdrew child

² Around this time, the Minnesota Governor declared a peacetime emergency in response to the COVID-19 pandemic and the Chief Justice of the Minnesota Supreme Court issued administrative orders that placed limitations on district court proceedings. *See e.g., Order, Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency*, No. ADM20-8001 (Minn. March 20, 2020).

from high school and failed to re-enroll her in school, causing child to miss between 7 and 14 school days. Father acknowledged that child missed some school. After withdrawing child from high school, father enrolled child in programming at a mental-health facility. According to father, child was discharged from the facility earlier than expected and he had not yet arranged for child to resume schooling.

The county's physical-abuse allegations involved two incidents that both occurred during the evening of March 17, 2020. The first incident occurred when father discovered that child had obtained a new cell phone after he had confiscated her cell phone as a disciplinary measure. During the incident, which father's girlfriend partially video recorded, father demanded that child turn over the new cell phone. When child refused, father attempted to take the phone from child and a physical struggle ensued on child's bed. During this struggle, child told father that he had hurt her neck.

Shortly thereafter, a second physical confrontation occurred in the garage. Father testified that child took his cell phone, texted a family member a request to call 911, and then disabled father's cell phone. According to father, child began throwing and breaking things in the garage. He testified that he put child in a "bear hug" to gain control over her. But child testified that father used a "chokehold," placing one arm around her neck and shoulders, and his other arm around her waist. During this second physical struggle, both father and child fell to the garage floor.

Police arrived. They took child to the hospital where she was interviewed and examined for injuries. Photos of child's neck showed observable marks, which a child-abuse physician found to be consistent with trauma from strangulation or a child's own

hands struggling to release another's hold. Based on this evidence and child's interview statements, a child-protection investigator made a maltreatment determination against father.

In addition to the evidence concerning the incidents that prompted the county's CHIPS petition, the district court heard testimony about underlying circumstances within the family. For instance, father testified about child's mental health and behavioral issues, and child testified about father's inability to regulate his anger. The district court also received multiple exhibits, including a partial video recording of the March 17 domestic altercation between father and child.

After the trial, the district court issued detailed findings of fact and conclusions of law in a written order. The district court rejected the county's claim of educational neglect. But the district court concluded that the county had proven by clear and convincing evidence that father physically abused child on March 17, 2020. Based on this evidence, the district court adjudicated child in need of protection and services on three grounds: (1) physical abuse, (2) child is without proper parental care, and (3) child's home is a dangerous environment. In fashioning a disposition, the district court considered father's noncompliance with his voluntary case plan, the family's unresolved conflicts, and child's best interests. The district court transferred legal custody of the child to the county for placement in foster care until father corrects the underlying issues that led to child's removal by substantially complying with his case plan.

Father appeals.

DECISION

I. Because father failed to raise his due-process claim in the district court, we decline to address the claim.

Father first argues that the district court's failure to timely commence a trial on the county's CHIPS petition violated his constitutional right to due process.

"The parent-child relationship is among the fundamental rights protected by the constitutional guarantees of due process." *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). A parent is entitled to due process in the course of juvenile protection matters. *See In re Welfare of N.W.*, 405 N.W.2d 512, 516 (Minn. App. 1987) ("[D]ue process requires that juvenile proceedings comport with basic tenets of fundamental fairness."). One process that a parent is due in juvenile protection matters is "a timely opportunity for a hearing." *D.F.*, 752 N.W.2d at 97.

The Minnesota Rules of Juvenile Protection provide specific timelines for child-protection proceedings. The rules state that "a trial regarding a child in need [of] protection or services matter shall commence within 60 days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier." Minn. R. Juv. Prot. P. 43, subd. 4, 49.01, subd. 1.

Here, the trial on the CHIPS petition commenced outside of the 60-day window provided by the rules. Father argues that the district court's failure to comply with the rules violated his right to due process. *See id.* For relief, he asks us to "address this failure in the interests of justice."

But father did not raise this issue in the district court. Generally, a reviewing court “will not address constitutional issues that were not raised before the district court.” *D.F.*, 752 N.W.2d at 97; *see also Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to address issues raised for the first time on appellate review).

Father argues that he raised the issue below by “request[ing] a trial at least three times, on the record, prior to actually being provided one.” This argument is a stretch, however. Merely requesting a trial does not raise a constitutional challenge to the timing of a trial. Moreover, father failed to provide us with a record of these requests. “It is an appellant’s burden to provide any transcript necessary for appellate review.” *In re Commitment of Johnson*, 931 N.W.2d 649, 658 (Minn. App. 2019); Minn. R. Civ. App. P. 110.02, subd. 1(a). Because father did not provide this court with transcripts of the pretrial hearings, we do not have a record of the discussions that occurred in connection with the requests, including the district court’s responses.³ Father did provide a transcript of the trial that ultimately occurred. However, during the trial, father made no challenge to the timing of the trial and did not allege any due-process violation.

Indeed, the record before us does not show that father ever objected to the timing of the trial or presented the constitutional argument that he now raises on appeal. Because father’s due-process claim was not raised below, we decline to consider it for the first time.

³ We do not question whether father made the trial requests. The district court’s orders make clear that father requested a trial. But we do not have the benefit of the verbatim record made when father made his requests.

See e.g., *Bergstrom v. McEwen*, 960 N.W.2d 556, 562 (Minn. 2021); *Thiele*, 425 N.W.2d at 582.

II. The district court’s order adjudicating child in need of protection or services is supported by sufficient factual findings and conclusions of law.

Father next challenges the district court’s determination that child is in need of protection or services. He contends that the district court’s decision is unsupported by its factual findings and those findings “fail to conform with its conclusions of law.”

To adjudicate a child in need of protection or services, the district court must find there is a basis for adjudication under Minnesota Statute section 260C.007, subdivision 6 (2020),⁴ and the child needs protection or services as a result. *In re Welfare of Child of H.G.D.*, 953 N.W.2d 735, 741 (Minn. App. 2021). The petitioning agency must prove the basis for adjudication alleged in the CHIPS petition by clear and convincing evidence. *Id.*; see Minn. Stat. § 260C.163, subd. 1(a) (2020); Minn. R. Juv. Prot. P. 49.03.

⁴ Section 260C.007 provides multiple bases for a CHIPS adjudication, including that the child “is abandoned or without parent, guardian, or custodian,” “has been a victim of physical or sexual abuse,” “is without necessary food, clothing, shelter, education, or other required care” because the child’s parent “is unable or unwilling to provide that care,” is without “special care made necessary by a physical, mental, or emotional condition,” “is medically neglected,” is “one whose parent, guardian, or other custodian for good cause desires to be relieved of the child’s care and custody,” “has been placed for adoption or care in violation of law,” “is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child’s parent,” “is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child,” “is experiencing growth delays . . . due to parental neglect,” “is a sexually exploited youth,” “has committed a delinquent act . . . before becoming ten years old,” “is a runaway,” “is a habitual truant,” “has been found incompetent to proceed or has been found not guilty by reason of mental illness or mental deficiency” in a juvenile or criminal matter, and “has a parent whose parental rights to one or more other children were involuntarily terminated . . . or transferred.” Minn. Stat. § 260C.007, subd. 6.

On review, our examination of a CHIPS adjudication order is twofold. First, we review a district court’s factual findings for clear error by closely considering the record to determine whether the evidence was clear and convincing. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321-22 (Minn. App. 2015), *review denied* (Minn. Jul. 20, 2015). Second, we review a district court’s statutory basis for adjudication for an abuse of discretion. *Id.* But we must be mindful of the district court’s superior position to assess the credibility of witnesses. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). We therefore defer to its credibility determinations. *Id.*

Father challenges a number of factual findings and all three statutory grounds addressed in the district court’s CHIPS adjudication order. However, because his arguments actually concern the district court’s determinations on mixed questions of law and fact, we pause to better clarify the applicable standard of review.

In juvenile protection matters, where courts are tasked with considering fact-based statutory criteria, a district court must often resolve issues that present both questions of law and questions of fact—“mixed questions.” *See* Minn. Stat. §§ 260C.001, subd. 2(a), .007, subd. 6, .212, subd. 2(b) (2020); *see also In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 899-901 (Minn. App. 2011) (discussing inherent two-part process required of district courts in deciding juvenile-protection cases), *review denied* (Minn. Jan. 6, 2012). In deciding these mixed questions, the district court considers the evidence and finds the underlying facts relevant to the statutory basis for adjudication alleged by the agency. *Id.* at 899-900 (applying same concept to review termination of parental rights appeal). Then,

in light of those underlying facts, the district court must exercise its judgment and ultimately determine whether a particular basis for adjudication exists. *Id.* at 900-01.

As noted, an appellate court reviews the district court's findings of the underlying facts for clear error. *Id.* But in reviewing the district court's determinations on mixed questions of law and fact, including the particular statutory grounds relied upon for the adjudication, we apply the abuse-of-discretion standard of review. *Id.* at 901.

With that standard of review in mind, we now consider the district court's findings of fact and ultimate determinations on the statutory bases provided for the adjudication.

Physical abuse

A child is considered "in need of protection or services" if the child has "been a victim of physical . . . abuse as defined in section 260E.03, subdivision 18." Minn. Stat. § 260C.007, subd. 6(2)(i). Section 260E.03, subdivision 18 (2020), defines "physical abuse" as "any physical injury" to a child other than injuries caused by "accidental means." Minn. Stat. § 260E.03, subd. 18(a); *see also* Minn. Stat. § 260C.007, subd. 5 (2020). "Abuse does not include reasonable and moderate physical discipline of a child administered by a parent." Minn. Stat. § 260E.03, subd. 18(b). A parent's "unreasonable interference with a child's breathing" is one such action explicitly considered "not reasonable and moderate." *Id.*, subd. 18(c). Moreover, when determining whether to adjudicate a child in need of protection or services, a district court must always consider the child's "health, safety, and best interests." Minn. Stat. § 260C.001, subd. 2(a).

The district court found that, on March 17, 2020, father used an "unreasonable" degree of physical force to overcome child's resistance while removing the cell phone from

child's bedroom. Additionally, the district court found that father "intentionally placed [child] in a 'choke hold' in the garage by placing one of his hands and arms around her neck and shoulder area." And the district court noted concern about the unresolved problems in the home, including father's anger issues and his refusal to engage in the case plan offered to him before trial.

Given these findings, the district court determined that father "intentionally inflicted physical injury on [child] within the meaning of the statute," and his "physical discipline of [child] was not reasonable or moderate." And the district court found that the evidence proved that father injured child's neck during these altercations, which meets the definition of physical abuse. The district court concluded that adjudication and continued placement in foster care would serve child's best interests until father demonstrates—through substantial compliance with the case plan ordered to correct the conditions that led to child's removal—that "[he] can safely and appropriately parent his child."

Father does not dispute the district court's determination that physical abuse occurred. He argues that the district court failed to articulate why child needs protection or services as a result of the abuse.⁵ Father also contends that the district court clearly erred in finding that he has unresolved anger issues, that the conditions that resulted in child's

⁵ In his brief to this court, father also asserted that the district court misapplied the relevant statutes to define "physical abuse" as a ground for adjudication. His counsel withdrew this argument during oral argument after conceding that the district court correctly referenced the maltreatment reporting statute, section 260E.03, subdivision 18, to define physical abuse under section 260C.007, subdivision 6. Because we agree that the district court properly applied these provisions and father withdrew his claim of error, we need not address his argument.

removal from his care have not been corrected, and ultimately that adjudication was in child's best interests.

We agree with father that, to grant the county's CHIPS petition, the district court was required to find facts supporting a statutory ground for adjudication *and* facts supporting a determination that child consequently requires protection or services. *See In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 728 (Minn. App. 2009). But our review of the record confirms that the district court made both of these required determinations—including that child required protection and services as a result of physical abuse—and supported its determinations with factual findings drawn directly from the trial evidence.

Specifically, the district court found that father's "unaddressed and unacknowledged anger issues" interfere with his ability to safely parent child. Although father contends that the district court clearly erred in finding that he has anger issues, the district court supported this finding with evidence in the record, highlighting portions of the social worker's and child's trial testimony regarding father's anger.⁶ In addition to these observations about father's anger issues, the district court noted that father "minimizes the severity of his conduct on the evening in question and places all of the blame on [child]." This finding related to father's own trial testimony that the CHIPS case was about child and her behavior, and not him. Given father's anger and his inability to accept responsibility for his role in conflicts with child, the district court found that "the

⁶ Father argues that his behavior with child-protection workers, as relayed during the social worker's testimony, has no bearing on his relationship with child. But we see no error in the district court's consideration of father's behavior in addressing father's willingness to address the issues that led to child's removal.

risk of future physical altercations occurring is high in the absence of intensive services for the family.” And the district court concluded that father’s refusal to participate in the voluntary case plan—which included services intended to remedy the issues that resulted in child’s removal, such as individual therapy, domestic violence and anger management programming, and parenting education—“demonstrates an unwillingness to seriously address the issues that led to [child] being placed in foster care.”

Because father physically abused child, and the district court considered and determined that child is consequently in need of protection and services, the district court did not abuse its discretion in adjudicating child on the basis of physical abuse.

Dangerous environment

To adjudicate a child in need of protection or services, the district court need only rely on one statutory ground under section 260C.007, subdivision 6. *See H.G.D.*, 953 N.W.2d at 741; *S.S.W.*, 767 N.W.2d at 728. While the district court’s determination of physical abuse and an associated need for protection or services is sufficient to affirm the adjudication, we choose to briefly address a second basis that is clearly supported by the record.

In addition to physical abuse, the district court also determined adjudication was proper under section 260C.007, subdivision 6(9), “because the child’s behavior, condition, or environment is such as to be injurious or dangerous to the child or others.” Father argues that the district court failed to make any findings that “identify issues related to the child’s environment, or how the environment is dangerous, let alone why the child would need protection or services as a result of her environment.”

We disagree. Child testified that the physical abuse made her feel “[s]cared, anxious, [and] sad,” that she would not feel safe returning to the home, and that another physical altercation could happen if there was another argument. The district court credited child’s testimony as credible and we defer to that determination. *L.A.F.*, 554 N.W.2d at 396.

Father contends that this case is factually similar to *In re Welfare of Children of N.F.*, which also involved an allegation that the child’s environment was injurious or dangerous. 749 N.W.2d 802, 805 (Minn. 2008). There, the supreme court concluded that evidence that parents paddled their child, causing pain but not injury, did not establish physical abuse or a dangerous environment. *Id.* at 810-12.

Here, however, the county presented evidence that father physically abused child by initiating two physical encounters and ultimately injuring child’s neck with a chokehold. Given the proven physical abuse, father’s refusal to acknowledge his role in the violence, and child’s reasonable fear, the district court did not abuse its discretion in determining that immediately reunifying child and father would expose child to a dangerous or injurious environment.

In sum, we conclude that the district court did not abuse its discretion in adjudicating child in need of services and protection on the grounds of physical abuse and a dangerous or injurious environment. Because these grounds are sufficient for us to affirm the adjudication, we need not address the district court’s third ground for adjudication.

Finally, father challenges the district court’s findings regarding the disposition ordered—child’s placement in foster care. He argues that the district court “clearly erred”

in finding that child's placement in foster care is in child's best interests, that there are no dispositional alternatives that will adequately protect child's safety, and that the county made reasonable efforts to reunite the family by providing services.

Father's challenges primarily relate to the district court's findings from the EPC hearing, when child was removed from father's home and placed in foster care based on the physical abuse. The county argues that the EPC order is not properly before us because father did not appeal the EPC order and instead appealed from the district court's adjudication order. Because the EPC order was an intermediate dispositional order, however, father was not able to appeal it as a matter of right. *See In re Welfare of E.G.*, 876 N.W.2d 872, 873-75 (Minn. App. 2016). But even assuming that father can now challenge that order, father has not provided us with the record that he asks us to review—a transcript of the EPC hearing. *See Johnson*, 931 N.W.2d at 658 (explaining appellant has the duty to provide the records necessary for appellate review); Minn. R. Civ. App. P. 110.02, subd. 1(a). Thus, we do not consider father's challenges to the EPC proceedings.

Father also challenges the district court's consideration of these issues in the adjudication order, asserting simply that the district court "clearly erred" or "failed to make adequate findings." An appellate court does not "discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court's findings." *Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951). Rather, a reviewing court's "duty is performed when [it] consider[s] all the evidence . . . and determine[s] that it reasonably supports the findings." *Id.*; *see also Cook v. Arimitsu*, 907 N.W.2d 233, 240 n.3 (Minn. App. 2018) (applying this aspect of *Wilson* in a family law appeal), *review denied* (Minn. Apr. 17,

2018). We have carefully reviewed the district court's order, which addresses why child's continued placement in foster care is in child's best interests, the lack of dispositional alternatives, and the efforts that the county made to reunite the family. *See* Minn. Stat. § 260C.201, subd. 2 (2020) (identifying facts that district court must address in ordering a disposition after finding that a child is in need of protection and services). The district court explained in detail why it is not in child's best interests to return home until father acknowledges and addresses his anger issues, why foster care is the appropriate disposition until father substantially engages in his case plan, and the services that the county has offered to reunite the family. Based on the record before us, we cannot conclude that the district court clearly erred or failed to make sufficient findings.

Affirmed.