

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0674**

In the Matter of the Welfare of the Children of: D. Y., Parent.

**Filed November 22, 2021
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-JV-20-3356

Anne M. Carlson, Anne M. Carlson Law Office, PLLC, St. Paul, Minnesota (for appellant-mother D. Y.)

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David Allen Yates, Minneapolis, Minnesota (for guardian *ad litem*)

Considered and decided by Smith, Tracy M., Presiding Judge; Slieter, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the district court order adjudicating her children in need of protection or services (CHIPS). Appellant argues her due-process rights were violated because the CHIPS trial occurred beyond the timeline established by the juvenile-protection rules. Appellant also claims the district court abused its discretion by

concluding that the children are in need of protection or services and erred by finding the disposition was in the children's best interests. Because appellant was not prejudiced by the timing of the trial date, her due-process rights were not violated. Also, because the record supports the district court's determination that the children face a present risk of harm and that the disposition is in the children's best interests, we affirm.

FACTS

Appellant-mother D.Y. has three minor children who were, at the time of trial, ages four, three, and one. Mother and the children's father lived together from 2014 to 2020.

On June 21, 2020, the family was living in a hotel after they were forced from their house due to a mortgage foreclosure. After father assaulted her during a three-hour period in the hotel room with the children present, mother called the police from her vehicle. Respondent Hennepin County Human Services and Public Health Department (the county) met with mother who agreed and signed a voluntary case plan. The voluntary case plan directed mother to 1) complete a mental-health evaluation, 2) participate in parenting education, 3) obtain safe and stable housing for the children, 4) cooperate with the county and notify it before changing addresses, 5) prevent contact between father and the children unless authorized by the social worker, and 6) participate in domestic-violence programming. Mother and her children, with the county's consent, moved in with the children's maternal grandmother and resided there from July 2020 to September 2020.

Without notifying the county, mother and her children moved from the maternal grandmother's home in September. Mother did not respond to multiple phone calls, text messages, and emails from the county after September 1. The county filed a CHIPS

petition on September 21, 2020, along with an *ex parte* motion for emergency protective care (EPC), which the court granted. The EPC order directed that the children were to be immediately taken into custody and placed by the county.

The county had no contact with mother or the children until early November when it located mother and children at a family shelter. The county took emergency custody of the children and, following an EPC hearing on November 9, the district court ordered interim legal custody of the children be granted to the county. The children were initially placed in foster care with mother's brother and, later, with the maternal grandmother.

During a December 9 pretrial hearing, at which mother was present and with her appointed counsel, the county requested the scheduling of a trial date and all parties except mother were willing to participate in a remotely conducted trial.¹ The district court scheduled another pretrial hearing for January 8 and a trial for March 19. During the January 8 pretrial hearing, mother requested that her appointed counsel be dismissed, which the district court granted. Mother retained private counsel on February 1. On March 12, mother moved to dismiss the CHIPS proceeding for failure to hold a trial within the 60-day period set out by the juvenile-protection rules. The district court denied this motion.

The district court adjudicated the children in need of protection or services, concluding that the children are: (1) without necessary food, clothing, shelter, education or other required care, (2) without proper parental care, and (3) in an environment which is

¹ All court proceedings, with unrelated exceptions, were to be held remotely, due to an order of the Chief Justice responding to the COVID-19 pandemic. *Order Governing the Continuing Operations of the Minn. Jud. Branch*, No. ADM20-8001 at 2-3 (Minn. Nov. 20, 2020).

injurious or dangerous to the children or others. The district court also found the disposition was in the children's best interests. The disposition included a transfer of legal custody to the county for placement in foster care. Mother appeals.

DECISION

We review a CHIPS determination under “a very deferential standard of review.” *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (Minn. App. 2009). We review “factual findings for clear error and [] 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), *rev. denied* (Minn. July 20, 2015). Noting that “[t]he clear-error standard of review is familiar because it applies across many contexts,” the supreme court recently stated: “In applying the clear-error standard, [appellate courts] view the evidence in a light favorable to the findings. [Appellate courts] will not conclude that a factfinder clearly erred unless, on the entire evidence, [they] are left with a definite and firm conviction that a mistake has been committed.” *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations and citations omitted). Additionally,

[the] clear-error review does not permit an appellate court to weigh the evidence as if trying the matter *de novo*. Neither does it permit an appellate court to engage in fact-finding anew, even if the court would find the facts to be different if it determined them in the first instance. Nor should an appellate court reconcile conflicting evidence. Consequently, an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court.

Id. at 221-22 (quotations, citations, and alterations omitted).

The decision of a trial court to adjudicate a child in need of protection or services will not be reversed “[i]n the absence of a clear abuse of discretion.” *S.S.W.*, 767 N.W.2d at 734 (quotation omitted). “Among other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotation and citations omitted).

I. Mother was not denied due process by the trial occurring 130 days after the EPC hearing.

Mother argues that the March 19 trial, which occurred 130 days after the EPC hearing date, was “per se prejudicial” because “no remedies were available to Mother that would enable her to have the children returned to her care” between their removal and issuance of the district court’s CHIPS order.

“[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. 49.01. Mother’s trial began on March 19, 130 days after the November 9 EPC hearing, in violation of the rule.² However, this does not end our analysis. The question we are asked to consider is whether this violation of the procedural rule deprived mother of due process. On this record, we conclude it does not.

² Respondent argues that the trial date did not violate the rule because Minn. R. Juv. Prot. P. 49.01 provides for a trial continuance. This rule does not apply here because the trial was set, in the first instance, 70 days beyond the timeline – trial was never continued pursuant to this rule.

“Due process requires reasonable notice, a timely opportunity for a hearing, the right to counsel, the opportunity to present evidence, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record.” *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). “[P]rejudice as a result of the alleged violation is an essential component of the due process analysis.” *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008) (citations omitted). The prejudice inquiry facilitates the fundamentally flexible nature of the “procedural protections as the particular situation demands.” *Bendorf v. Comm’r of Pub. Safety*, 727 N.W.2d 410, 415 (Minn. 2007) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)); *In re Welfare of HGB*, 306 N.W.2d 821, 825 (Minn. 1981) (“It is settled that the nature of due process is flexibility.”).

Mother was aware, at the time of the December 9, 2020 pretrial hearing, that all trials were scheduled remotely due to the Chief Justice’s pandemic order. However, mother informed the court she wished for an “in person” hearing. The district court explained its reasoning for the scheduled date at the beginning of the March 19 trial as it denied mother’s March 12 due-process-pretrial motion to dismiss. The court explained that it attempted to accommodate mother’s request: “the farther out [it] set the date . . . [the] more likely she would be able to have an in-person trial.”³ The record reveals that, until mother’s March 12 pretrial motion, she did not object to the trial date though it had

³ The trial was ultimately held remotely, pursuant to a continued prohibition of in-person civil trials absent an exception by the chief judge of the district made after consultation with the Chief Justice. *Order Governing the Continuing Operations of the Minn. Jud. Branch*, No. ADM20-8001 at 2-3 (Minn. Feb. 18, 2021).

been established on December 9, 2020.⁴ Therefore, the first opportunity for the district court to consider mother's due-process objection was at the start of the March 19 trial.

Mother has provided no law, and we have found none, which suggests that the violation of a court deadline in a child protection matter results in "per se prejudice." Mother fully contested the CHIPS petition. Mother testified during the trial and her trial attorney conducted thorough cross-examination of the county's witnesses.

Further, the record belies mother's claim that "no remedies were available to Mother that would enable her to have the children returned to her care." Mother repeatedly informed the social worker that she would not comply with the case plan "until after trial to see if [the county] has any solid proofs to prove that [her] kids are in need of CHIPS and to see if [she] need[s] any of [the] recommended services." The county continued its attempts to connect mother with services after taking custody of the children and, during trial, continued to express a desire to assist mother with the recommended services. Mother declined these efforts.

In sum, mother was not denied due process by the delayed trial date.

II. The district court was within its discretion in concluding the children are in need of protection or services.

"[S]ection 260C.007, subdivision 6, requires proof that one of the enumerated child-protection grounds exists and that the subject child needs protection or services as a result."

S.S.W., 767 N.W.2d at 728. We review the district court's "factual findings for clear error

⁴ Mother did not provide this court with a transcript of the pretrial hearings. Therefore, we are not aware of any discussion between the parties and the district court which may have preceded the establishment of the trial date.

and its finding of a statutory basis for the order for abuse of discretion.” *D.L.D.*, 865 N.W.2d at 321. This involves a close inquiry into the sufficiency of the evidence, but due deference “to the district court, which is in a superior position to assess the credibility of witnesses.” *In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 873 (Minn. 2021) (quotation omitted).

The district court found that mother’s children were in need of protection or services because their “environment [was] such as to be injurious or dangerous to the child[ren] or others. An injurious or dangerous environment may include, but is not limited to, the exposure of [children] to criminal activity in the child[ren]’s home.” Minn. Stat. § 260C.007, subd. 6(9) (2020). Following the June 2020 assault, father was convicted of domestic assault by strangulation. *See* Minn. Stat. § 609.2247 (2020).

Mother argues the district court abused its discretion in concluding this ground existed because it “addressed an incident that occurred nine months prior to trial, . . . failed to make any clear and specific findings that conform with the statutory criteria, and . . . failed [to] identify a causal link between the children’s environment and their resulting need for protection or services.” We disagree.

The district court found, and the record confirms, that mother has “a long history or involvement with domestic violence, including violence committed on her in the presence of her children.”⁵ The record shows that since 2014 mother has repeatedly returned to

⁵ Mother testified that the children were not present for the physical abuse in June, but the district court did not find her testimony credible, and we defer to the district court’s credibility determination. *H.G.D.*, 962 N.W.2d at 873.

father following assaults, including serious assault leading mother to seek medical attention including hospitalization and a protective order against father, which she later had dismissed. The record also indicates that the children have been present for multiple incidents when father assaulted mother.

In sum, the record supports the district court's factual finding that the children remain at risk of being exposed to criminal activity in the home if mother is present. Therefore, the district court was within its discretion to conclude the children face an injurious or dangerous environment and are, therefore, in need of protection or services.⁶

III. The district court was within its discretion to conclude that the disposition is in the children's best interests.

An order for disposition as a child in need of protection or services must address "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) (2020). The district court found that "[i]t is in the best interests and safety of the children to remain in foster care placement until [mother] can provide a safe environment for her children, demonstrated through her substantial compliance with the case plan ordered below and her correction of the conditions which lead to the placement." The record supports the district court's findings.

Two social workers and the guardian *ad litem*, all of whom the district court found credible, testified that continued out-of-home placement and custody with the county was

⁶ Because the statute requires the existence of only one statutory ground to demonstrate the children are in need of protection or services, and because we affirm the district court's determination on this ground, we do not consider the other two grounds found by the district court to exist.

in the children's best interest. Mother, despite recent incidents of domestic violence, returned to the children's father. The children witnessed mother being abused on multiple occasions. Mother did not have stable housing after her children were removed, and, at the time of trial, was living with her brother, whom the court found would not prevent contact by father with the children. Mother did not provide verification that she participated in domestic-violence programming as directed by her case plan nor did she accept any other services offered by the county to assist her to comply with the case plan.

Because the record supports the district court's finding that it is in the best interests of the children to remain in an out-of-home placement, the district court did not abuse its discretion in concluding that the disposition was in the children's best interests.

Affirmed.