This opinion is nonprecedential except as provided by Minn.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
A21-1139

In the Matter of the Welfare of the Children of: T. L. S. and J. J. C., Parents.

Filed February 22, 2022
Affirmed
Reyes, Judge

Cottonwood County District Court
File No. 17-JV-21-28

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Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal of the district court's order revoking a stay of a prior order adjudicating appellant-mother's children as children in need of protection or services (CHIPS), mother argues that the record does not support the district court's determination that she violated the conditions of the stay. We affirm.

FACTS

Appellant T.L.S. (mother) is the mother of three minor children. In April 2021, Des Moines Valley Health and Human Services (the agency) petitioned the district court to adjudicate the children CHIPS. The petition alleged that two of the children were exposed to domestic violence between mother and the children's father J.J.C. At the time, the children lived with mother's parents.

In June 2021, mother admitted to the facts in the petition and agreed to a stay of adjudication. The district court's order staying adjudication required mother to abide by several conditions, including: (1) submitting to both random and scheduled urinary analysis (UA) drug tests and (2) seeking prior approval by the agency or the guardian ad litem of any roommates or frequent house guests. If mother abided by these and the other enumerated conditions for 90 days, the district court would dismiss the CHIPS petition.

After the district court's order, the agency made several attempts to administer random UA drug tests to mother at her home, but none succeeded. Four times, mother did not answer the door even though her car was in the driveway, twice, mother was not home, and once, mother admitted to being home but not realizing that agency staff were there.

As to scheduled tests mother needed to take prior to visiting her children, mother successfully provided a sample and tested negative three times, successfully provided a sample but tested positive for alcohol once, and failed to provide a sample three times.

In late June 2021, the agency moved to revoke the stay of adjudication alleging that mother violated the conditions of her stay, and the district court held an evidentiary hearing. Following the hearing, the district court found that the agency proved by clear and

convincing evidence that mother violated the conditions of her stay and granted the agency's CHIPS petition. Mother appeals.

DECISION

Mother argues that the agency did not prove that she violated the conditions of the stay of adjudication with clear and convincing evidence. We are not persuaded.

"Findings in a CHIPS proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence." *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998) (citation omitted). The district court may adjudicate a child in need of protection or services when an agency has shown by clear and convincing evidence that at least one of the statutory child-protection grounds exists. Minn. Stat. § 260C.007, subd. 6 (2020); *see* Minn. R. Juv. Prot. P. 49.03 (stating that the standard of proof in juvenile-protection matters is clear-and-convincing evidence).[1] The clear-and-convincing standard requires more than the preponderance-of-the-evidence standard but is less demanding than the proof-beyond-a-reasonable-doubt standard. *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). We closely examine the record to determine whether the agency presented

[1] We note that no Minnesota court has decided whether the clear-and-convincing evidentiary standard applies to proving a parent *violated* the conditions of their stay of adjudication in a CHIPS proceeding. *But cf. In re Welfare of P.R.L.*, 622 N.W.2d 538, 544 (Minn. 2001) (noting, in the context of a stayed termination of parental rights, that grounds existed to terminate at the time of the first termination order but that the question before the court was whether adequate grounds existed to terminate parental rights at the time of the second order). We apply that standard because it is a higher evidentiary standard than preponderance of the evidence. *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). If the clear-and-convincing standard is met, then the preponderance-of-the-evidence standard is necessarily met.

clear-and-convincing evidence and whether the district court's factual findings are clearly erroneous. *See id.* Because "[t]he district court is vested with broad discretionary powers when deciding juvenile-protection matters," we defer to the district court's decision and ability to assess witness credibility. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009) (quotation omitted).

Mother argues that the agency did not prove by clear-and-convincing evidence that she "refused to cooperate" and provide random urine samples. The district court found that, based on mother's failure to provide a sample for any of the random UAs the agency attempted to obtain after the district court's June 14 order, she refused to cooperate with social workers. The district court's finding is supported by clear-and-convincing evidence in the record.

In two affidavits, an agency social worker described multiple occasions when she arrived at mother's house to conduct a random UA. The worker explained that mother either was home and did not answer the door or claimed she was not home and misled the social worker as to her whereabouts, suggesting that mother tried to evade the random UAs. The social worker also testified at the evidentiary hearing that mother's trend of unsuccessful random UAs differs from the social worker's prior experience with mother. Before the CHIPS proceeding, the agency monitored mother's drug use. From December 2019 to January 2021, mother successfully completed 30 of 31 random UAs. The district court explicitly found the social worker's affidavits credible and implicitly found the social worker's testimony to be credible, a determination to which we defer. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99

(Minn. App. 2009) (noting that district court's findings "implicitly indicate[d]" that it found certain evidence credible); *Knapp v. Knapp*, 883 N.W.2d 833, 837 (Minn. App. 2016) (stating that "[appellate courts] defer to the district court's credibility determinations as to conflicting affidavits"). These facts support the district court's finding that mother refused to comply with the random UAs.

Mother's counterarguments are unpersuasive. Mother first argues that she failed several of these tests because she missed the collection cup when trying to provide a sample. But a second agency social worker testified during the motion hearing that missing the cup, especially when using a plastic funnel called a "hat," is rare. And mother successfully provided samples both in the months before the CHIPS proceeding and for several scheduled UAs while the CHIPS adjudication was stayed.[2] Second, mother argues that the district court should not hold against her the times she missed random UAs when she was not at home. But mother still violated the conditions of the stay. The conditions of the stay provide that if the agency tried to collect a random UA and mother was not home, then mother must either return home, meet the social worker halfway from where

[2] One of these tests was positive for ETG, a substance found in alcohol. Mother argues that this positive test may be a false positive, but the district court's order states that this positive test "is not a dispositive issue" because mother violated other conditions of the stay. Because the district court did not rely on this positive test to revoke the stay, any error in a false positive result for that test becomes harmless. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (stating that appellant bears burden of showing error on appeal); *see In re Welfare of Child of J.R.R.*, 943 N.W.2d 661, 671 (Minn. App. 2020) (ignoring an error as harmless in a voluntary termination of parental rights proceeding); *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 172 (Minn. App. 2005) (noting that the erroneous admission of evidence which is cumulative to other admissible evidence is harmless); *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 97 (Minn. App. 2012) (citing *J.B.*).

she is located, or report to an agency location to provide a sample. Other than offering to come to one of the agency's locations to provide a sample on a few of the occasions when she was not home, mother did not otherwise comply with that condition.

As a result, we conclude that the district court did not clearly err by finding by clear and convincing evidence that mother refused to provide random UAs. Because one violation of the stay of adjudication is enough to adjudicate the CHIPS petition, we need not consider whether clear-and-convincing evidence supported mother violating the provision against unapproved houseguests or roommates.

Affirmed.