STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1293

In the Matter of the Welfare of:
B. J. S., Child.

Filed June 24, 2008
Affirmed
Worke, Judge

Stearns County District Court
File No. J1-06-51786

Lawrence Hammerling, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Janelle P. Kendall, Stearns County Attorney, Dan J. Conlin, Assistant County Attorney, Administration Center, RM 448, 705 Courthouse Square, St. Cloud, MN 56303 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and Worke, Judge.

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

WORKE, Judge

On appeal from a delinquency adjudication for two counts of second-degree criminal sexual conduct, appellant argues that (1) the district court's failure to make specific findings in support of the verdict makes meaningful appellate review impossible;

(2) the evidence was insufficient to sustain his delinquency adjudication; (3) the district court erred when it allowed expert opinion testimony concerning the general characteristics of sexually abused children when that testimony was not helpful; and (4) the district court erred in allowing the videotape of the victim's out-of-court statement as substantive evidence when that statement was inconsistent with her trial testimony. We affirm.

D E C I S I O N

"On appeal from a determination that the elements [of a delinquency petition] have been proved [beyond a reasonable doubt], an appellate court is limited to ascertaining whether, given the facts and legitimate inferences, a factfinder could reasonably make that determination." *In re Welfare of S.M.J.*, 556 N.W.2d 4, 6 (Minn. App. 1996) (citing *State v. Merrill*, 274 N.W.2d 99, 111 (Minn. 1978)). "We are required to view the record in the light most favorable to the determination and assume that the factfinder believed the testimony supporting the determination and disbelieved any contrary evidence." *Id.*

In 2006, a delinquency petition was filed charging appellant B.J.S. with two counts of second-degree criminal sexual conduct. The petition alleged that appellant engaged in sexual contact with seven-year-old S.P., including touching S.P. in the vaginal area when she did not have her clothes on. The district court found that the state had proved the petition and adjudicated appellant delinquent.

Findings

Appellant argues that the district court's failure to make specific findings in support of the delinquency adjudication violates his right to meaningful appellate review. The district court must provide written findings supporting a delinquency disposition, including why the disposition serves the best interests of the child, and what alternative dispositions were considered by the court and why the alternative dispositions were not appropriate. Minn. R. Juv. Delinq. P. 15.05, subd. 2. However, this court has held that particularized findings on the district court's decision to impose or withhold adjudication of delinquency are not required. *In re Welfare of J.L.Y.*, 596 N.W.2d 692, 695 (Minn. App. 1999), *review granted* (Minn. Sept. 28, 1999) *and order granting review vacated* (Minn. Feb. 15, 2000). "The particularized findings, including the finding on the least restrictive means for restoring a juvenile to law-abiding conduct, are required in determining a disposition, but not when deciding whether to adjudicate or stay adjudication." *Id.* Because particularized findings are not required when imposing an adjudication of delinquency, the district court did not err in failing to make specific findings in support of the delinquency adjudication. Furthermore, the record is sufficient for meaningful appellate review.

Sufficiency of the Evidence

Appellant argues that the evidence was insufficient as a matter of law to sustain his delinquency adjudication. In considering a claim of insufficient evidence, our review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the [delinquency adjudication], was sufficient to

permit the [factfinder] to reach the verdict [that it] did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We must assume that the factfinder believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

Appellant argues that S.P.'s testimony was inconsistent with prior statements and there was no independent corroboration of her testimony. Appellant also argues that it is impossible to determine what acts the district court relied upon for its determination due to S.P.'s inconsistent statements. Appellant concedes that in criminal-sexual-conduct cases, the victim's testimony need not be corroborated. *State v. Cichon*, 458 N.W.2d 730, 735 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990); Minn. Stat. § 609.347, subd. 1 (2006). If the other evidence of guilt is insufficient, however, corroboration is required. *Cichon*, 458 N.W.2d at 735. If a victim gives differing accounts of the incident at different times, it is left to the factfinder to determine the credibility of each account. *See State v. Erickson*, 454 N.W.2d 624, 629 (Minn. App. 1990) (holding that evidence was sufficient to sustain conviction even though victim's account of the sexual abuse changed over time), *review denied* (Minn. May 23, 1990); *State v. Blair*, 402 N.W.2d 154, 158 (Minn. App. 1987) (holding that evidence was sufficient when victim disclosed sexual abuse prior to trial on five or more occasions but testified to only three incidents and that the inconsistency between the prior statement and testimony was an issue for the factfinder to consider in weighing victim's credibility).

In July or August 2006, S.P. told her mother that appellant had pulled down the bottom of her swimsuit while they were swimming in appellant's pool. When S.P.'s mother asked her if appellant had touched her, S.P. stated that he had not. However, S.P. told her mother that appellant had taken her into his bedroom on another occasion, pulled her pants and underwear down, and looked at her. S.P.'s mother called appellant's mother. She also called her pastor, who reported the allegations to the authorities. S.P. was then interviewed by an investigator who was trained in the CornerHouse[1] method of interviewing children. The officer asked S.P. if anyone had ever touched her in a place she did not like, and S.P. responded that appellant had. S.P. stated that appellant would bring her to his bedroom, pull down her pants and underwear, and touch her vaginal area. S.P. did not have a specific name for her vaginal area but pointed to the area on a diagram. The officer also interviewed appellant, who denied touching S.P. and stated that he accidentally became entangled in S.P.'s swimsuit bottom while they were playing a game when appellant would swim underwater and attempt to pull the other kids underwater.

S.P. gave slightly different statements at different times. While S.P. told her mother that appellant had not touched her, S.P. told the CornerHouse investigator that appellant had touched her. S.P. also testified that appellant touched her during the pool incident, whereas she previously stated that he had not. Even though S.P. provided slightly different versions of the sexual abuse, we must presume that the district court

[1] CornerHouse is a child-abuse training and evaluation center whose stated mission is to assess suspected child sexual abuse, to coordinate forensic interview services, and to provide training for other professionals.

found that the version of the sexual abuse S.P. gave to the investigator during the CornerHouse interview was more credible than her other versions. Because the district court is in the best position to weigh the credibility of the witnesses and we must view the evidence in the light most favorable to the delinquency adjudication, the record is sufficient to allow the factfinder to reach the verdict that it did.

Expert Testimony

Appellant argues that the district court erred in allowing expert testimony concerning the general characteristics of sexually abused children because the testimony was not helpful. "The admission of expert testimony is within the broad discretion accorded a [district] court, and rulings regarding materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence may be reversed only if the [district] court clearly abused its discretion." *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999) (quotation and citations omitted); *see also State v. Grecinger*, 569 N.W.2d 189, 194 (Minn. 1997) (holding reversal requires "apparent error").

At trial, the state called an expert to testify generally regarding the characteristics of sexually abused children. Appellant's counsel stipulated to the witness being an expert in the field. The expert testified regarding the timing and manner in which sexually abused children disclose the abuse and testified that delayed disclosure is common and that different factors influence what and when the child discloses. Appellant's counsel did not object to either the scope or the nature of the expert's testimony. Generally, failure to object to evidence at trial constitutes waiver of those issues on appeal. *State v. Beard*, 288 N.W.2d 717, 718 (Minn. 1980). Therefore, we review the issue for plain

error. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). To establish plain error, appellant must show that the ruling (1) was an error, (2) that was plain, and (3) that affected appellant's substantial rights. *Id.* "If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *Id.*

The rules of evidence provide for the admission of expert testimony if it will aid the factfinder in understanding the evidence or in determining a fact in issue. Minn. R. Evid. 701, 702. The Minnesota Supreme Court has held that comparisons of the emotional and psychological characteristics observed in sexually abused children to those observed in the complainant is a proper subject of expert testimony because it is outside the knowledge of a lay jury and would be helpful to it. *State v. Myers*, 359 N.W.2d 604, 609 (Minn. 1984).

Under the first prong of the plain-error test, "[a]n error is plain if the error is clear or obvious." *State v. Burg*, 648 N.W.2d 673, 677 (Minn. 2002) (quotation omitted). The expert here testified regarding the timing and manner in which sexually abused children disclose the abuse and testified that delayed disclosure is common and that different factors influence what and when the child discloses. S.P. delayed disclosure of the abuse, had difficulty naming appellant as her abuser while testifying in court, had an incomplete recollection of the crime, and was tentative and reluctant to disclose certain details. S.P.'s demeanor during the CornerHouse interview was very different from that at trial. Without expert testimony describing the general characteristics of child sexual abuse, a factfinder might conclude that S.P. was not credible. The expert testimony was presented

in an effort to help the factfinder make a fair and informed evaluation of S.P.'s testimony. Even if allowing the expert testimony was in error, appellant failed to show that the error was plain. Because the admission of the expert testimony regarding the general characteristics of a sexually abused child was not "clear" or "obvious" error, the first prong of the plain-error test has not been satisfied and we need not go any further with the analysis.

Admission of Tape-Recorded Interview

Finally, appellant argues that the district court erred in allowing the recording of S.P.'s out-of-court statement to be admitted as substantive evidence when the statement was inconsistent with her testimony. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted). Here, the state provided appellant with a pretrial notice that it intended to offer the recording of the CornerHouse interview as substantive evidence. Appellant did not make any pretrial objections or object when the state moved for the admission of the recording and transcript at trial. Appellant also did not object when the prosecutor, on two separate occasions, urged the court to consider the CornerHouse interview as substantive evidence.

Appellant's failure to object to the admission of the recording of the CornerHouse interview constitutes waiver of that issue on appeal. *Beard*, 288 N.W.2d at 718. Therefore, we review the issue for plain error. *Griller*, 583 N.W.2d at 740. Appellant

must show that the ruling was plain error that affected his substantial rights. *Id.* If the test is met, we then assesses whether we should address the error to ensure fairness and the integrity of the judicial proceedings. *Id.*

"An error is plain if the error is clear or obvious." *Burg*, 648 N.W.2d at 677 (quotation omitted). A review of the record shows that the recording of the CornerHouse interview was not erroneously admitted. "[T]he Minnesota Supreme Court has held that recorded interviews of child sexual abuse victims must be shown to bear the particularized guarantees of trustworthiness required under [federal caselaw]." *State v. Danforth*, 573 N.W.2d 369, 375 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Feb. 19, 1998). Given S.P.'s strong and relatively consistent statements regarding the abuse, her apparent lack of motive to fabricate the allegations, and the professionalism of the CornerHouse interview, the district court did not err in determining that the videotape was sufficiently reliable to be admitted into evidence. Because the admission of the recording of the CornerHouse interview was not "clear" or "obvious" error, the first prong of the plain-error test has not been satisfied, and we need not go any further with the analysis.

Affirmed.