STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0519

In the Matter of the Welfare of the Child of: S. M. P. and B. B., Parents and In the Matter of the Welfare of the Child of: S. M. P. and R. S., Parents

Filed September 1, 2009
Affirmed
Larkin, Judge

Koochiching County District Court
File No. 36-JV-07-624

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Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

LARKIN, Judge

Appellant challenges the district court's orders permanently transferring physical and legal custody of her daughter to a relative and adjudicating her son a child in need of protection or services. Appellant argues that (1) the orders are not supported by clear and convincing evidence, (2) the district court erred by consolidating the juvenile-protection petitions concerning her children for trial, and (3) she was unfairly prejudiced by procedural and due-process errors. Because none of appellant's arguments is persuasive, we affirm.

FACTS

The cases before us for review concern the welfare of two children: K.K.B. and L.P. K.K.B. was born to appellant S.M.P. (mother) and B.B. (father) on June 13, 2005. On September 10, 2007, Koochiching County Community Services (the agency) placed a 72-hour hold on K.K.B. after appellant failed to pick up K.K.B. from a relative's home. The agency placed K.K.B. with her aunt.

On September 13, 2007, the agency filed a child-in-need-of-protection-or-services (CHIPS) petition regarding K.K.B. The CHIPS petition alleged that appellant was supposed to pick up K.K.B. at 9:00 a.m. on September 7, at K.K.B.'s paternal grandparent's home. Appellant called the grandparent on September 7 and stated that she could not pick up K.K.B. until noon that day. As of September 8, appellant had not picked up K.K.B., and appellant's whereabouts were unknown. K.K.B. was without medication, clothing, and diapers. The agency had previously received reports that

appellant provided inadequate care for K.K.B. and had left K.K.B. with caregivers without provisions for her basic needs.

On September 14, the district court held an emergency-protective-care hearing. Appellant did not appear at the hearing. The district court approved K.K.B.'s placement with her aunt and appointed a guardian ad litem for K.K.B.

On September 19, appellant met with the agency to develop an out-of-home-placement plan. On September 25, appellant participated in a chemical-dependency assessment that recommended outpatient services. On October 24, appellant signed an out-of-home-placement plan. On November 2, appellant admitted that K.K.B. was a child in need of protection or services because she was without proper parental care because of appellant's emotional, mental or physical disability or state of immaturity. *See* Minn. Stat. § 260C.007, subd. 6(8) (2008). The district court ordered continued out-of-home placement for K.K.B. and accepted the out-of-home-placement plan presented at the hearing.

The district court held review hearings on March 13, April 24, June 12, July 10, and August 8, 2008. At these hearings, the district court adopted reports presented by the agency, approved out-of-home-placement plans, and determined that the agency had made reasonable efforts to avoid the out-of-home placement and reasonable attempts at reunification. Appellant did not object to the out-of-home-placement plans or the agency's reasonable efforts. On August 22, 2008, the agency filed a permanency petition concerning K.K.B.

The child L.P. was born on May 7, 2001, to appellant and respondent R.S. (father). Appellant and R.S. had a joint custody arrangement whereby physical custody of L.P. alternated between the parents on a weekly basis. On August 25, 2008, the agency filed a petition alleging that L.P. was a child in need of protection or services based upon appellant's failure to pick up L.P. as scheduled on August 11. The petition also referenced K.K.B.'s CHIPS case, alleging that appellant had recently failed to attend a supervised visit with K.K.B. and left town without informing the agency in violation of the terms of the court-ordered out-of-home-placement plan. The petition further alleged that L.P. was left in the care of various people during a week when appellant was responsible for his care. Appellant moved to dismiss the petition, and the district court denied the motion.

The district court held a consolidated trial on the permanency petition concerning K.K.B. and the CHIPS petition concerning L.P. in October and November 2008. By the time of the trial, K.K.B. had resided out of appellant's home for nearly 14 continuous months. After the conclusion of the consolidated trials, the district court filed its orders. The district court held that the agency proved that an order transferring permanent physical and legal custody of K.K.B. to her aunt is in the child's best interests. The district court also concluded that the agency proved that L.P. is a child in need of protection or services.

Appellant moved to amend the findings or in the alternative for a new trial. The district court denied appellant's motions. This appeal follows.

D E C I S I O N

I. The district court did not err by transferring permanent physical and legal custody of K.K.B. to her aunt.

When reviewing a permanent-placement order, this court determines whether the district court's permanency "findings address the statutory criteria and are supported by substantial evidence, or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996) (quotation omitted). We view the evidence and its reasonable inferences in the light most favorable to the district court's findings of fact and will not disturb those findings unless they are clearly erroneous. *Id.* at 261-62. A reviewing court closely inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998); Minn. R. Juv. Prot. P. 39.04, subd. 1 (establishing the evidentiary burden as clear and convincing). Clear and convincing evidence is evidence that is unequivocal, uncontradicted, and intrinsically probable and credible. *Deli v. Univ. of Minn.*, 511 N.W.2d 46, 52 (Minn. App. 1994), *review denied* (Minn. Mar. 23, 1994). "Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

To successfully challenge a district court's findings, a party "must show that despite viewing that evidence in the light most favorable to the [district] court's findings . . . , the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). "That the

record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.* Whether the district court correctly applied the law is a legal question, which this court reviews de novo. *In re A.R.M.*, 611 N.W.2d 43, 47 (Minn. App. 2000).

a. The District Court's Findings

Appellant assigns error to several of the district court's findings. We address each in turn.

Appellant first disputes the district court's finding that she did not complete treatment until July 2008, citing her completion of inpatient treatment in May 2008. But the district court's findings recognize that appellant completed inpatient treatment in May and then completed outpatient treatment in July. Appellant testified that she discontinued outpatient treatment, entered and completed inpatient treatment, and then completed outpatient treatment. Thus, the district court's finding is supported by substantial evidence in the record, and it is not clearly erroneous.

Appellant also disputes the district court's finding that she signed the out-of-home-placement plans and that she was consulted in their preparation. The district court found that the plans were "reviewed" and "executed" by appellant. Four out-of-home-placement plans were received into evidence. Appellant signed only the first plan. But all of the plans state that they were developed with appellant's input, thereby providing support for the district court's finding that appellant was consulted in their preparation. Appellant does not claim that she did not receive a copy of the plans or that she did not know the content of the plans. The record does not indicate that appellant ever objected

to the plans or requested clarification of their requirements. Thus, even if the district court's finding that appellant signed all of the plans is erroneous, we fail to see how appellant is prejudiced by the finding. *In re Welfare of D.J.N.*, 568 N.W.2d 170, 175-76 (Minn. App. 1997) (affirming a termination-of-parental-rights order when appellants failed to demonstrate that the district court's error was prejudicial). We do not reverse for non-prejudicial error. *Id.*

Appellant next assigns error to several findings made by the district court in paragraph 15 of its findings of fact. Appellant argues that "[she] has never had an OFP regarding JK." Because the district court did not find that there was an order for protection regarding J.K., appellant's assignment of error is without merit. Appellant also contests the district court's finding that she is in the "early stages of recovery." The district court explained that appellant is in the "early stages of recovery" because it took appellant almost two months to follow through on the recommendations of her chemical-dependency assessment; she did not complete treatment until ten months after K.K.B.'s placement out of home; and she had only gone a couple of months without a significant relapse. "Early stages of recovery" accurately summarizes these more detailed findings.

Appellant also assigns error to paragraph 15 of the findings of fact based on her contention that she has not missed 23 visits with K.K.B. "of her own doing." The district court found that there were at least 23 missed visits attributable to appellant but did not specify the dates of the visits. Nevertheless, there is testimony that appellant missed 18 visits with K.K.B., which is a significant number of visits. Thus, even if there is not

record evidence of 23 missed visits, the discrepancy between 18 and 23 missed visits does not amount to reversible error. *Id.* at 176.

Appellant also disputes the district court's finding that she "clearly" knew how to maintain medical coverage. The district court found that appellant was required to "maintain medical coverage for herself" and failed in this task despite "clearly knowing how to go about it." This finding is supported by appellant's testimony that "[f]or the most part I believe I was [maintaining medical insurance on myself], but there were times where I would find out that my enrollment had expired."

Appellant next contends that the district court erred by giving Lawrence Hanus's parental-capacity evaluation "great deference," because the report was ten months old at the time of trial, did not consider appellant's improvements, and was based on only one to two hours of face-to-face contact with appellant. Appellant also argues that Hanus never observed her parenting her child. We reject these arguments because Hanus testified at trial regarding his evaluation and the district court's acceptance of his opinions reflects a credibility determination to which we defer. *In re L.A.F.*, 554 N.W.2d at 396.

Finally, appellant disputes the district court's finding that she was noncompliant as of February 2008 and did not begin to comply until it was "practically too late" for reunification. The district court found that at the time of trial, appellant was where she should have been in February 2008 when there was still time to work on reunification. The district court's finding is supported by the record. More time was remaining to work on reunification in February 2008 than was remaining at the time of trial.

In summary, none of the challenged findings is clearly erroneous and prejudicial. Thus, appellant is not entitled to relief on this ground.

b. The Statutory Criteria

We review a permanent-placement order for whether the findings address the statutory criteria. *A.R.G.-B.*, 551 N.W.2d at 261. Appellant contends that the district court failed to address the statutory criteria under Minn. Stat. § 260C.201, subd. 11(i) (2008), which provides:

> An order permanently placing a child out of the home of the parent or guardian must include the following detailed findings:
>
> (1) how the child's best interests are served by the order;
>
> (2) the nature and extent of the responsible social service agency's reasonable efforts, or, in the case of an Indian child, active efforts to reunify the child with the parent or guardian where reasonable efforts are required;
>
> (3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
>
> (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

We address each statutory criterion in turn.

The district court found that permanent placement with K.K.B.'s aunt was in K.K.B.'s best interests for the following reasons: K.K.B.'s aunt is a relative; K.K.B.'s aunt has known K.K.B. since birth; K.K.B.'s aunt expressed an interest in becoming the permanent custodian of K.K.B.; K.K.B. and her aunt had a relationship prior to K.K.B.'s placement; K.K.B.'s aunt has been K.K.B.'s primary caretaker since September 10, 2007; appellant previously entrusted K.K.B. to the care of her aunt; K.K.B.'s aunt has provided

K.K.B. with a stable home environment; K.K.B. has adjusted in her aunt's care; K.K.B.'s aunt is mentally fit to care for K.K.B. and has demonstrated the ability to care for K.K.B.; and K.K.B.'s aunt will raise the child in her culture and religion.

Appellant does not dispute the accuracy of these findings. Our review of the record indicates that the findings are substantially supported by the testimony of the guardian ad litem and K.K.B.'s aunt. These findings adequately address the statutory best-interests criterion.

With regard to the agency's reasonable efforts, a social services agency's efforts toward reunification must be designed to address "the problem presented," *In re Welfare of S.Z.*, 547 N.W.2d 886, 892 (Minn. 1996), and must "include real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child." *In re Welfare of M.A.*, 408 N.W.2d 227, 236 (Minn. App. 1987) (quotation omitted), *review denied* (Minn. Sept. 18, 1987). Reasonable efforts do not include efforts that would be futile. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 56 (Minn. 2004); *S.Z.*, 547 N.W.2d at 892.

> When determining whether reasonable efforts have been made, the court shall consider whether services to the child and family were:
>
> (1) relevant to the safety and protection of the child;
> (2) adequate to meet the needs of the child and family;
> (3) culturally appropriate;
> (4) available and accessible;
> (5) consistent and timely; and
> (6) realistic under the circumstances.

Minn. Stat. § 260.012(h) (2008). Whether the county has met its duty of reasonable efforts requires consideration of the length of the time the county was involved and the

quality of effort given. *In re Welfare of M.G.*, 407 N.W.2d 118, 122 (Minn. App. 1987). "[A] case plan that has been approved by the district court is presumptively reasonable." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 388 (Minn. 2008).

The district court found that the agency made reasonable efforts to rehabilitate the appellant and reunite the family, noting that the trial testimony "bolstered and confirmed the Agency's reasonable efforts." The district court found that the agency provided supervised visitation; case management services; medical coverage for K.K.B.; coordinated services; foster care in a licensed relative home; preliminary breath tests and urinalysis; drop-in services; funding for inpatient treatment; rule 25 services; a psychological evaluation; a clothing allowance; parenting classes; in-home-family-based services; public health nurse consults; and DBT and individual therapy. The district court also found that the agency repeatedly met with appellant and explained concurrent permanency planning and the necessity of compliance.

The record substantially supports the district court's findings. The case reports detail the services provided by the agency. Tammie Treat, a child-protection social worker, testified that she helped appellant schedule her domestic abuse counseling and that when appellant had difficulty attending group sessions, the agency arranged private counseling. Treat also testified that the agency helped appellant obtain funding for inpatient treatment and to find a sponsor. K.K.B.'s aunt testified that the agency brought K.K.B. to visit appellant when appellant was in inpatient treatment. Cindy Ellefson-Oswald, a supervisor with the agency, testified that she believed that the agency arranged for a diagnostic assessment and follow-up counseling for appellant. Susan Thorstad-

Salmi, a family-based service provider, testified that she worked with appellant in a parenting-education program. Lawrence Hanus testified that he prepared a parental-capacity psychological evaluation of appellant.

Appellant does not challenge the accuracy of these findings. Instead, appellant generally argues that the agency failed to make reasonable efforts. Appellant asserts that the agency was required to do more than assign her a list of tasks to be completed. But appellant never objected to the agency's efforts during the course of the case. Moreover, appellant does not argue that there were additional services that could have been provided to help her achieve reunification. And despite her complaints that the agency failed to adequately assist her, the record indicates that she did, in fact, access the services.

Appellant also makes a number of vague challenges that are unsupported by legal argument or citation to legal authority. She challenges the educational background and experience of her assigned case worker but fails to explain how she was prejudiced by the alleged deficiencies except to state it "may have affected the assistance that was offered." Appellant also contends that there were so many changes to the out-of-home-placement plans that it was difficult for her to follow the plans and that the agency did not provide her any help in accomplishing her plan tasks. Again, appellant fails to explain what changes were difficult to comply with. Moreover, the majority of the requirements that appellant claims the agency failed to help her with concern tasks that she completed on her own, which indicates that the agency's alleged failure did not prejudice appellant. Finally, appellant complains that the agency did not increase the frequency or duration of her visits with K.K.B. But appellant advances no argument regarding why it would be

appropriate to increase visitation despite her failure to consistently exercise her visitation rights. We decline to consider these arguments because an assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection, and we discern no obvious prejudicial error related to these challenges. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)). The district court's findings regarding the agency's reasonable efforts are supported by substantial evidence and adequately address this statutory criterion.

We next consider appellant's efforts to use services to correct the conditions that led to K.K.B.'s out-of-home placement and whether those conditions have been corrected. This court looks for significant progress in fulfilling the requirements of an assigned case plan. *See In re Welfare of M.H.*, 595 N.W.2d 223, 227 (Minn. App. 1999) (noting that mother had made significant progress in fulfilling her case plan and "her failures to comply could not be blamed entirely on her"). Where a parent's degree of progress does not address all aspects of a case plan that are critical to the parent's ability to care for his or her children, a showing of only some progress is insufficient to establish that the district court's finding is clearly erroneous. *See In re Welfare of J.K.*, 374 N.W.2d 463, 466 (Minn. App. 1985) (noting that an alleged recent improvement was, in light of a "negative track record," not enough to show that the district court clearly erred by finding that the mother's poor parenting would continue indefinitely), *review denied* (Minn. Nov. 25, 1985).

The record supports the district court's findings that appellant failed to accomplish the following case-plan related tasks: attend classes at Friends Against Abuse; complete parenting classes; remain chemically free and sober; maintain adequate, safe housing; maintain gainful employment; and participate in all medical appointments for K.K.B. For example, the testimony indicates that appellant only attended four domestic-abuse classes after October 2007, even though the meetings occurred weekly and the agency attempted to set up private counseling around appellant's schedule. And appellant testified that she had relapsed as recently as August 2008.

The district court also found that appellant has borderline personality disorder, which impacts her ability to correct the conditions that led to out-of-home placement. This finding is supported by the testimony and report of Hanus, who testified that someone with appellant's diagnosis would have trouble parenting, maintaining healthy relationships, and maintaining employment.

Appellant contends that her noncompliance did not rise to a level that warrants permanent placement. Her contention is without merit. Her initial parenting evaluation stated: "[Appellant] must successfully complete outpatient chemical dependency treatment and demonstrate a verified period of sobriety and abstinence *over a minimum of six months* before she is considered for unsupervised or over-night visitation." (Emphasis added.) Appellant failed to remain chemically free and sober. Appellant testified on November 20, 2008 that she had only been sober for approximately 30 days.

The district court's findings regarding appellant's efforts to use services to correct the circumstances that led to K.K.B.'s out-of-home placement are supported by

substantial evidence and adequately address this statutory criterion. Furthermore, these findings support the district court's determination that appellant "did not and has not corrected the conditions which [led] to the placement of" K.K.B.

In summary, the district court's findings are supported by substantial evidence and adequately address the statutory criteria under section 260C.201, subd. 11(i), and there is a clear-and-convincing evidentiary basis for the district court's permanency order.

II. The district court did not err by concluding that L.P. is a child in need of protection or services.

The district court is vested with "broad discretionary powers" when deciding juvenile-protection matters. *Booth v. Hennepin County Welfare Bd.*, 235 Minn. 395, 400, 91 N.W.2d 921, 924 (1958) (quotation omitted). Typically, findings in a juvenile-protection proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence. *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994), *review denied* (Minn. Nov. 29, 1994). A reviewing court closely inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *J.M.*, 574 N.W.2d at 724. Clear and convincing evidence is evidence that is unequivocal, uncontradicted, and intrinsically probable and credible. *Deli*, 511 N.W.2d at 52. "Considerable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *L.A.F.*, 554 N.W.2d at 396.

The district court found that appellant is chemically dependent; appellant has borderline personality disorder with antisocial and narcissistic features; L.P.'s exposure to appellant's untreated behavior is emotionally and mentally damaging to the child and

may place L.P. in physical danger; and L.P. is in need of protection or services because when L.P. has been scheduled to be in appellant's care, he has been without the necessary care for his physical or mental health or morals. From these findings the district court concluded that L.P. is without proper parental care because of the emotional, mental, or physical disability or state of immaturity of appellant, and in need of protection or services under Minn. Stat. § 260C.007, subd. 6(8).

The district court's findings are substantially supported by the record. There was testimony that after L.P. had been bitten by a dog, appellant dropped him off at his paternal great-grandparent's home without first providing him with medical care, despite the fact that his face was extremely swollen. On another occasion, appellant dropped L.P. off with his paternal relatives on a Friday and did not return at the appointed time to pick him up on Sunday. Instead, appellant called L.P.'s father two hours after the pick-up time and stated that she was four hours away, would not pick up L.P., and wanted him to find someone to take L.P. L.P. was upset when appellant never returned to pick him up on this occasion. Finally, L.P. has said that he does not like it when appellant drinks. Appellant admitted that she drank in August 2008 while on a camping trip with L.P. Appellant testified: "There was one time when I drove the next morning after a night of drinking. I believe there was alcohol on my breath." The following colloquy also occurred:

> Q. Do you think your drinking has ever put the children at risk?
> A. When it comes to my partners and our domestic relationships, my children could have been in danger, could have been put in danger.

The testimony provides support for the district court's conclusion that L.P. is a child in need of protection or services because he is without proper parental care because of appellant's emotional, mental, or physical disability, or state of immaturity.

Appellant contends that L.P. was not proven to be a child in need of protection or services by clear and convincing evidence. Appellant argues that when L.P. was out of her care, he was with relatives and was therefore never without proper care. Appellant also argues that there were legitimate reasons for her absence and her decision to leave L.P. in his paternal family's care. We reject these arguments. While appellant's failure to pick up L.P. from his paternal relative's care may not have placed L.P. in immediate danger, it does not constitute "proper parental care." Proper parental care would have involved arranging alternative care for L.P. and explaining the situation to L.P. and the care-giving relatives. And while appellant may have had legitimate reasons for her unexplained absence, those reasons do not substitute for proper care. Finally, appellant contends that her relapse was normal and that drinking in front of L.P. did not place L.P. at risk. While relapse may be normal, it does not excuse appellant's failure to provide L.P. with proper parental care.

Because the evidence is clear and convincing, the district court did not abuse its discretion by finding that L.P. is a child in need of protection or services.

III. The district court did not abuse its discretion by consolidating the permanency and CHIPS petitions for trial.

Appellant claims that she was subjected to unfair prejudice as a result of the district court's decision to consolidate the permanency and CHIPS petitions for trial. We review the district court's decision to consolidate the petitions concerning K.K.B. and L.P. for an abuse of discretion. *See Durkin v. Hinich*, 442 N.W.2d 148, 152 (Minn. 1989) (reviewing a district court's consolidation of petitions for an abuse of discretion). In *Durkin*, the supreme court concluded that the district court did not abuse its discretion by consolidating a petition for permanent custody of a child under Chapter 518 and a separate dependency and a neglect petition concerning the same child where the district court had jurisdiction over both matters; the guiding principle in all custody cases is the best interests of the child; and the court did not limit testimony on either petition. *Id.*

We conclude that the district court did not abuse its discretion by consolidating the underlying cases for trial. The district court had jurisdiction over both cases, which were assigned to the same district court judge. *See* Minn. R. Juv. Prot. P. 7.07 2003 advisory comm. cmt. (stating "the Committee recommends that courts implement the one-judge one-family concept to the greatest extent possible"). Both cases concerned appellant's parenting ability and her children's best interests. The district court did not limit testimony on either petition, and the district court determined that the evidence received was admissible in each case. Finally, the district court made separate findings of fact and conclusions of law as to each child.

Appellant cites *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 91 S. Ct. 1976, 1985 (1971) to define fundamental fairness as "notice, counsel, confrontation, cross-examination, and standard of proof." But appellant does not explain how she was denied any of the aforementioned rights. Appellant specifically cites Lawrence Hanus's parental-capacity evaluation, contending the report was irrelevant to L.P.'s case. Appellant does not explain how it is irrelevant except to state that it was prepared for K.K.B.'s case. The evaluation states that appellant's behavior is consistent with the "immaturity and antisocial features identified in this evaluation." The recommendations state that appellant must complete outpatient treatment and maintain sobriety; her diagnosis meets the statutory criteria for serious and persistent mental illness; and she should be referred to psychotherapy services. All of these findings pertain to appellant's emotional, mental or physical health and state of maturity, which were at issue in the CHIPS trial concerning L.P. Thus, the report was highly relevant. We find no error in the district court's decision to consolidate the petitions for trial.

IV. The district court did not abuse its discretion by denying appellant's motion for a new trial.

Appellant contends that she was unfairly prejudiced by procedural and due-process errors. Appellant claims that she was denied her rights to counsel, an impartial decision maker, and a reasonable decision based solely on the record. Appellant raised these claims in her motion for amended findings or a new trial, which the district court denied. This court will ordinarily not disturb a district court's decision to deny a new

trial absent a clear abuse of discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990).

Appellant does not dispute that counsel was appointed to represent her. But she argues that her right to counsel was not vindicated because she did not always know who her attorney was; she had different attorneys at different hearings; her attorneys were located over 100 miles away and could not answer her day-to-day questions; and "[i]t is possible that some of the issues addressed at the trial . . . could have been resolved if [appellant] always had counsel and that counsel was readily available to assist her." Because appellant fails to provide legal argument or cite to legal authority in support of her claim that these issues violated her right to counsel, and we discern no obvious prejudicial error, this claim is waived. *Modern Recycling, Inc.*, 558 N.W.2d at 772.

Appellant also argues that the district court was not impartial and its decision was not based solely on the record because the district court heard evidence that may have been inadmissible had the cases not been consolidated. Appellant asserts that "[t]he record in these cases is too complicated to separate out what is permissible and what is not." There is no evidence of partiality in the record. And assuming that the district court's decision to consolidate the trials resulted in its receipt of inadmissible evidence, the district court is entrusted to disregard any evidence improperly admitted. *See Chris/Rob Realty v. Chrysler Realty Corp.*, 260 N.W.2d 456, 459 (Minn. 1977) (stating that an appellate court should trust in the ability of the district court to be objective and disregard improperly-admitted evidence).

Appellant's claim that she was unfairly prejudiced by procedural and due-process errors is unavailing. The district court did not abuse its discretion by denying appellant's motion for a new trial based on the alleged procedural and due-process errors. Because none of appellant's challenges is persuasive, we affirm.

Affirmed.

Dated: _____

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Judge Michelle A. Larkin