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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1276**

In the Matter of the Welfare of the Children of:
A. M. S. and J. W. S., Parents

**Filed December 1, 2009
Affirmed
Ross, Judge**

Sherburne County District Court
File No. 71-JV-09-62

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Considered and decided by Wright, Presiding Judge; Ross, Judge; and Crippen,
Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

A.M.S. appeals the district court's order determining that her children are in need of protection or services by challenging the sufficiency of the evidence supporting the court's finding that she physically abused her children. A.M.S. also argues that the evidence does not support the district court's findings that her children are without proper parental care and that her home is injurious or dangerous to them. The district court's finding of physical abuse is supported by the evidence and provides a sufficient ground for its decision adjudicating the children in need of protection or services. We therefore affirm.

FACTS

One weeknight in January 2009, J.S., 17, drove herself and her 15-year-old sister, H.S., home from church youth group. H.S. entered the house before her sister and told their mother, appellant A.M.S., that J.S. had been speeding. When J.S. entered, A.M.S. confronted her, asking, "What is the matter with you?" and "Why are you driving recklessly?" J.S. objected to the accusations, and the two argued loudly.

The argument turned violent. According to J.S., A.M.S. hit her on the shoulders and chest with her fist, struck her in the face, pulled her hair, pushed her head into a door, and held her against the door. A.M.S. knocked J.S. to the floor and then kicked her on the shins, thigh, and shoulder. A.M.S. told J.S. to get up and pulled her up by the hair. A.M.S. put her hands around J.S.'s neck, again pinning her against the door. J.S. could not breathe or pull her mother's hands away from her throat. After approximately 10

seconds, A.M.S. released J.S., who began coughing. A.M.S. emptied J.S.'s purse onto the counter and took her driver's license. J.S. asked for permission to go to her room to do homework, and A.M.S. told her to go to her room and clean it.

A.M.S.'s version of the incident differed significantly from J.S.'s. A.M.S. admitted that after J.S. refused to acknowledge that she had driven recklessly, she approached J.S., grabbed her by the jacket, and pushed her against the door, holding her in place. She also admitted to telling J.S. to "shut up" and said that she slapped J.S. in the face to control her. A.M.S. denied pulling J.S.'s hair, choking her, punching her in the chest, or pushing her to the ground.

H.S., who was in and out of the kitchen during the confrontation, testified that she saw A.M.S. strike J.S. in the face. H.S. heard J.S. crying and yelling, "Stop it!" H.S. saw A.M.S. pressing J.S. against the door with both hands at her throat. H.S. also testified that she heard J.S. coughing as if she had been choked.

J.S. was bruised on her eye, cheekbone, legs, shins, and thigh. She also experienced pain and difficulty swallowing food and water as a result of the choking.

The next day at school, social worker Lisa Holmquist noticed that J.S. had a black eye. J.S. showed Holmquist the bruises and swelling in her lower legs. She told Holmquist that she had a bruise on her thigh. And she told Holmquist that her chest and neck were sore because she had been pressed against a wall and choked. Holmquist relayed the report to Sherburne County Social Services, who notified police.

Investigators from the sheriff's department visited the school to interview J.S. and H.S. They observed a bruise under J.S.'s eye and bruises on her leg, and J.S. told them

she had been held against a door by her neck. The sheriff's investigators believed J.S.'s account. J.S. and H.S. were placed on a 72-hour protective hold and then sent to the home of their adult sister. Police arrested A.M.S., the state charged her with domestic assault, and a jury convicted her.

Social Services undertook its own investigation. A.M.S. refused to discuss the incident with Social Services or to allow a social worker to assess her home. The county filed a petition for a determination that the children were in need of protection or services. The district court granted the petition and found that it was in the girls' best interests to remain in foster care. A.M.S. appeals that determination.

D E C I S I O N

We first consider whether this appeal is moot because J.S. is now 18 years old and because, according to the county, A.M.S. has voluntarily terminated her parental rights to H.S. The mootness doctrine requires us to decide only "actual controversies" and to avoid issuing advisory opinions. *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999); *N. States Power Co. v. City of Sunfish Lake*, 659 N.W.2d 271, 274 (Minn. App. 2003), *review denied* (Minn. June 25, 2003). When this court cannot provide effectual relief, we deem a case moot and dismiss it. *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989). We consider the mootness of a case de novo. *In re Risk Level Determination of J.V.*, 741 N.W.2d 612, 614 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

Our decision on appeal could affect future district court proceedings. The district court may retain jurisdiction over a child subject to a CHIPS order until she reaches age 19 "if the court determines it is in the best interest of the individual to do so." Minn. Stat.

§ 260C.193, subd. 6 (2008). If we affirm the district court’s CHIPS adjudication, its jurisdiction over J.S. could last until September 2010. But if we reverse the CHIPS adjudication, the district court would lack jurisdiction to resolve new, related issues concerning J.S. This is therefore not an appeal in which our decision will lack effect.

The county asserts that A.M.S. voluntarily terminated her parental rights to H.S. at a permanent-placement hearing held September 3, 2009, after A.M.S. filed this appeal. But the record includes no evidence of A.M.S.’s voluntary termination or any district court order effecting the termination. And we received no reply brief from A.M.S. addressing mootness after the county raised the issue. We therefore lack any factual basis to question our jurisdiction in a manner that would prevent us from resolving the appeal on the merits. So we turn to the substance of A.M.S.’s appeal.

A.M.S. argues that the evidence is insufficient to support the district court’s adjudication of her children as needing protection or services. “Findings in a CHIPS 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). “In juvenile protection proceedings, this court determines whether the record contains substantial evidence to support the district court’s decision, taking into account that the burden of proof in the district court is ‘clear and convincing’ evidence.” *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998).

The district court may find a child to be in need of protection or services based on several enumerated statutory grounds. *See* Minn. Stat. § 260C.007, subd. 6 (2008) (listing grounds). In this case, the court found that multiple statutory grounds for

protection or services existed: both J.S. and H.S. are victims of physical abuse, *id.*, subd. 6(2)(i), and emotional maltreatment, *id.*, subd. 6(2)(iv); have resided with a victim, *id.*, subd. 6(2)(ii), and perpetrator, *id.*, subd. 6(2)(iii), of child abuse or domestic child abuse; are without proper parental care, *id.*, subd. 6(8); and live in an injurious or dangerous environment, *id.*, subd. 6(9). For the reasons that follow, we conclude that substantial evidence supports the district court's finding that J.S. is a victim of physical abuse and that H.S. has resided with a victim and a perpetrator of child abuse.

“Physical abuse” means “any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child’s care on a child by other than accidental means.” Minn. Stat. § 626.556, subd. 2(g) (2008). The district court had clear and convincing evidence to find that A.M.S. physically abused J.S. in January 2009. J.S. testified that her mother struck her on the shoulders and chest with a closed fist, struck her in the face, pulled her hair, and pushed her head into a door. J.S. also testified that A.M.S. knocked her down, kicked her on the shins, thigh, and shoulder, pulled her up by the hair, and used both hands to cut off her breathing. The details of the reported abuse were substantially corroborated by H.S.’s testimony. And A.M.S.’s actions caused J.S. “physical injury”; she had bruises on her face, shins, and thigh, along with pain when swallowing. The visible injuries were described by the testimony of Holmquist and a law enforcement investigator. Contrary to A.M.S.’s assertion on appeal that the record lacks proof of physical or mental injury to J.S., J.S.’s testimony alone would support the finding. The district court believed J.S.’s version of the events and disbelieved A.M.S.’s

version. This was a credibility determination to which we defer. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

A.M.S. contends that her actions in January 2009 constituted discipline rather than abuse. Corporal punishment is generally excluded from the definition of physical abuse, but only if it is reasonable and “does not result in an injury.” Minn. Stat. § 626.556, subd. 2(g) (emphasis added). And the statute expressly defines angry kicking, punching, and interference with a child’s breathing as unreasonable. *Id.* A.M.S.’s conduct did not constitute reasonable discipline. There also was evidence that J.S. experienced more than minor, temporary pain associated with reasonable corporal punishment; she suffered injuries—bruises and prolonged pain—as a result of her mother’s blows and choking. The district court’s conclusion that A.M.S. physically abused J.S. rests on clear and convincing evidence.

Clear and convincing evidence also supports the district court’s finding that H.S. resided with a victim and a perpetrator of child abuse, based on the same evidence that supports the finding that A.M.S. physically abused J.S. “Child abuse” includes “physical or sexual abuse” of a minor. Minn. Stat. 260C.007, subd. 5 (2008). A.M.S. was a perpetrator of child abuse in January 2009. Until that event caused H.S. to be removed from the home, H.S. resided with her mother and J.S. The district court’s finding that H.S. resided with a victim and a perpetrator of child abuse is therefore supported by the evidence and not clearly erroneous. Because the evidence supports the district court’s findings that J.S. was physically abused and that H.S. resided with a victim and

perpetrator of child abuse, the district's court's conclusion that the children are in need of protection or services is not clearly erroneous.

Affirmed.