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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1109**

In the Matter of the Welfare of the Children of: S. M., Parent.

**Filed December 16, 2013
Affirmed
Stauber, Judge**

Ramsey County District Court
File No. 62JV123693

Nicole S. Gronneberg, St. Paul, Minnesota (for appellant);

John Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul, Minnesota (for respondent);

Andrew T. Tyler, Minneapolis, Minnesota (for respondent father);

James I. Laurence, St. Paul, Minnesota (for guardian ad litem Abebayehu Gebeyehu).

Considered and decided by Stauber, Presiding Judge; Bjorkman, Judge; and Minge, Judge.*

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the district court's adjudication of her twin daughters as children in need of protection or services (CHIPS) following the discovery of multiple bone fractures in both infants, appellant-mother argues that (1) the record does not support the

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

determination that one or both parents abused the children because the county's medical experts testified that there is a possibility that the children suffer from a rare bone disease; (2) the district court should not have adopted the county's proposed order verbatim; and (3) the district court should have granted appellant's motion for a new trial. We affirm.

FACTS

Appellant S.M. is the mother of identical-twin girls, Aa.S. and Aj.S., born April 23, 2012. The father, S.B., lives with S.M., but they are not married. Aa.S. and Aj.S. were born premature at 34 weeks and experienced numerous health problems, including heart problems and acid reflux. From the time they were born until November 2012, Aa.S. was taken to the hospital 13 times and Aj.S. was taken to the hospital 11 times for treatment of these conditions.

On November 15, 2012, S.M. brought her six-month-old daughters to the hospital because Aa.S. had been crying and vomiting, and S.B. observed that she had a fever. After being examined by two other doctors, a third doctor observed that Aa.S.'s left thigh was swollen and tender. An x-ray image revealed that she had a mildly displaced distal left femoral fracture. Doctors performed a skeletal survey on both Aa.S. and Aj.S. The surveys showed that Aa.S. had "four rib fractures, a healing right clavicle fracture, a newer left clavicle fracture, possible left and right arm bone injuries, and incomplete greenstick or buckle fractures on [her] left tibia and fibula;" and, Aj.S. had "bilateral healing clavical fractures, irregularity of the distal left ulna, bilateral hip fractures, distal

right tibia fracture, subacute fractures of both distal left tibia and fibula[] with early periosteal reaction and a healing fracture at the base of [her] fifth metacarpal.”

S.M. and S.B. could not explain the injuries observed in their daughters. Both recalled an incident when Aa.S. was pulled from a swing and the lap belt may have caused one of her injuries; and they recalled that Aj.S. once fell off the sofa. On November 16, 2012, the police placed Aa.S. and Aj.S. on a 72-hour child-protective hold and placed them in foster care. On November 21, 2012, respondent Ramsey County Community and Human Services Department (the county), petitioned the court to adjudicate Aa.S. and Aj.S. as CHIPS.

A trial was held on the petition on February 27 and March 28, 2013. Numerous medical professionals testified regarding Aa.S. and Aj.S.’s injuries. Dr. Frank Glen Seidel, a pediatric radiologist, testified that despite numerous fractures of varying ages there was no evidence to suggest that the twins suffered from a brittle bone disease such as osteogenesis imperfecta (OI). Dr. Carrie George, a pediatric critical-care physician who treated the twins, testified that numerous tests were performed on the girls in order to rule out bone disease, and the test results were all negative. Dr. Richard Allan Kaplan, a certified child-abuse pediatrician who observed the children, testified that a child’s bones are very flexible, and that given the numerous fractures observed in the twin girls, they must have been subjected to high force traumas. Dr. Kaplan also testified that, in his opinion, the girls did not have OI because all the tests for OI came back negative and because the girls had no new fractures since they were placed in foster care. But

Dr. Kaplan also stated that there are rare forms of OI that cannot be detected by the tests that were performed on Aa.S. and Aj.S.

Two caseworkers and the children's guardian ad litem (GAL) also testified. The caseworkers both testified that, given the medical evidence and the lack of any other explanation for the abuse, they believed the children should remain in foster care. But the caseworkers also testified that there was no history of abuse and that the parents are involved and bonded with their children. The GAL testified that when he first met the children in January 2013, about two months after they were placed in foster care, their "emotion [was] down," but after the twins were placed in foster care with their grandmother and the parents were able to visit, the GAL saw "a lot of change." "The kids were very happy," they were connecting with their parents, and they were playing with toys and trying to walk. The GAL advocated for more visitation time for the parents but also testified that he believed the children should remain in the care of their grandmother until "we find out who did what and why these things happened."

Both parents testified at trial. S.B. testified that he was "shocked" when he learned of his daughter's fractures because they were never revealed during their normal checkups and frequent hospital visits. He testified that no one else was taking care of their children during this time, and that he did not think his partner, S.M., abused the children. S.B. denied ever disciplining or abusing the girls and said that he has started taking parenting classes. S.M. also testified that she did not believe that S.B. ever harmed her children and that she believes her children have a medical condition that resulted in the bone fractures. Numerous friends of the parents also testified that they

never observed S.M. or S.B. abuse their children and that they are good parents and good people who are very involved in their church community.

On April 29, 2013, the district court adjudicated Aa.S. and Aj.S. CHIPS. The district court concluded that “the children have been the victims of physical abuse perpetrated by one or both of the parents,” and therefore meet the definitions found in Minn. Stat. § 260C.007, subds. 6(2), (3), (8), (9) (2012). The language the district court adopted for its order was taken verbatim from the county’s proposed order and findings. Following appellant’s motion for amended findings and a new trial, the district court adopted certain other findings that were more favorable to the parents, but did not amend its legal conclusion adjudicating the twins CHIPS and denied appellant’s request for a new trial. This appeal followed.

D E C I S I O N

“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). “[A] district court’s individual fact-findings will not be set aside unless the review of the entire record leaves the court with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted). “[T]his 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.” *Id.* (quotation omitted). “The reviewing court will closely inquire into the sufficiency of the evidence to determine whether the evidence is clear and convincing.” *Id.* (quotation omitted). We review a denial of a motion for a new trial for

abuse of discretion. *See In re Welfare of V.R.*, 355 N.W.2d 426, 430 (Minn. App. 1984), *review denied* (Minn. Jan. 11, 1985).

Aa.S. and Aj.S. were adjudicated CHIPS under Minn. Stat. § 260C.007, subsds. 6(2), (3), (8), (9). Subdivision 6(2) applies when a child “has been a victim of physical or sexual abuse.” Minn. Stat. § 260C.007, subd. 6(2). Subdivision 6(3) defines a CHIPS as a child who is “without necessary food, clothing, shelter, education, or other required care for the child’s physical or mental health or morals because the child’s parent . . . is unable or unwilling to provide that care.” *Id.*, subd. 6(3). Subdivision 6(8) applies when a child is “without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child’s parent.” *Id.*, subd. 6(8). And subdivision 6(9) applies when a child is “one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others.” *Id.*, subd. 6(9). The district court specifically found that “the children have been the victims of physical abuse perpetrated by one or both of the parents.”

Appellant argues that the evidence was insufficient to support the CHIPS adjudication because the expert witnesses could not definitively exclude bone disease as the cause of the infants’ injuries. We disagree. Although the burden is on the county to prove the allegations in the petition by clear and convincing evidence, there is no requirement of proof beyond all doubt. *See Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). Aa.S. and Aj.S. underwent numerous tests to rule out bone disease including x-rays, genetic testing, collagen testing, calcium-levels testing, renal-function testing, an alkaline-phosphate test, complete blood count, and an electrolyte test. None of

these tests showed any indication that the twins suffer from a bone disease. The medical experts testified consistently that they did not have any reason to believe the twins have OI. The x-rays showed bones that were healing normally and had normal density and shape, which is not consistent with bone disease. And the fractures were not consistent with a child who is not yet ambulatory. Dr. Kaplan testified that, if the twins had OI, they would have received new fractures in foster care; but no new fractures were found. And the twins exhibited none of the telltale physical characteristics of OI: blue sclerae, wormian bones, or triangular face shape. We conclude that, on this record, there was substantial evidence to support the CHIPS adjudication. Moreover, even if the twins had bone disease, that fact alone does not prove that their injuries were not the result of abuse or neglect. We defer to the district court's determination of witness credibility, and conclude that the evidence was sufficient to support the conclusion that Aa.S. and Aj.S. were abused or without proper care. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

Appellant also argues that the evidence was insufficient because there was no other evidence of abuse aside from the multiple bone fractures: no bruising or other injuries, no apparent emotional trauma, and no eyewitness. But Dr. Kaplan testified that the vast majority of bone fractures in children do not present with bruising. And although the evidence of abuse is circumstantial, we conclude that the existence of multiple fractures at a minimum provides substantial evidence that the twins were without proper parental care under Minn. Stat. § 260C.007, subs. 6(3), (8), or that the twins were in a dangerous environment under Minn. Stat. 260C.007, subd. 6(9).

Appellant argues that there were no new fractures found after the twins were placed in foster care because the foster-care parents were instructed to handle the twins more carefully. Even so, Dr. Kaplan testified that if the twins had OI they would be sustaining fractures constantly during normal care and activities. The GAL observed the twins while in foster care being “active” and trying to stand up, and yet no new fractures occurred. The lack of new fractures in foster care provides substantial support for the district court’s conclusion that the twins were subjected to some kind of harm while in the care of their parents.

Appellant argues that the district court erred by adopting the county’s proposed order verbatim. The adoption of proposed findings verbatim is not erroneous per se, and the “clearly erroneous” standard is the proper standard of review on appeal. *Sigurdson v. Isanti County*, 408 N.W.2d 654, 657 (Minn. App. 1987), *review denied* (Minn. Aug. 19, 1987). We agree that the better policy is for the district court to consider proposed findings from both parties and to draft independent findings and conclusions. But in this case, we conclude that the district court’s findings are not clearly erroneous for the foregoing reasons, and because the district court amended its findings to include some of appellant’s proposed findings.

Appellant argues that it was error to adopt a finding taken from closing argument, which stated that appellant and S.B. “minimize[d] the significance of the[] findings.” The district court also stated that the parties “speculate that because the children presented at medical appointments and hospital visits prior to November 15, 2012 without bruising [that] is indicative of some underlying metabolic bone disease.” But

appellant does not explain why these findings are erroneous. Appellant argued, and argues now, that the absence of bruising is evidence of an underlying bone disease. Appellant also seeks to minimize the medical evidence showing that the children were victims of trauma rather than disease by arguing that the medical evidence is not incontrovertible. Neither argument makes these findings clearly erroneous.

Appellant also argues that the district court erred by not amending the findings to include the fact that the medical experts testified that there was a remote possibility that the children have a bone disease that could not be detected by their medical tests, or that bone fractures are, by themselves, evidence of bone disease. But the testimony in the record shows that none of the medical experts found any evidence of bone disease, making the possibility that the twins have a bone disease exceedingly rare and, therefore, not dispositive of any issue. And the fact that broken bones is a symptom of bone disease was not in dispute. Therefore, the district court's findings are not clearly erroneous and are supported by substantial evidence. And because we conclude that the district court did not err by adjudicating Aa.S. and Aj.S. CHIPS, we affirm the district court's denial of appellant's motion for a new trial.

Affirmed.