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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1988**

In the Matter of the Welfare of the Children of:
V. R. and A. B., Parents.

**Filed April 7, 2014
Affirmed
Halbrooks, Judge**

St. Louis County District Court
File No. 69HI-JV-13-63

Hannah N. Casey Forti, Chisholm, Minnesota (for appellant V.R.)

Mark S. Rubin, St. Louis County Attorney, Gayle M. Goff, Assistant County Attorney,
Hibbing, Minnesota (for respondent)

Deborah Ross-Jagunich, GAL Program, Virginia, Minnesota (for guardian ad litem)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and
Klaphake, Judge.*

UNPUBLISHED OPINION

HALBROOKS, Judge

Following the district court's adjudication of her children as children in need of protection or services (CHIPS), appellant argues that (1) the evidence is insufficient to support CHIPS findings under Minn. Stat. § 260C.007, subd. 6(2)(i), (ii), (iii) (2012), and

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

(2) the district court failed to make the required factual findings in support of its CHIPS finding under Minn. Stat. § 260C.007, subd. 6(4) (2012). We affirm.

FACTS

Appellant V.R. is the mother of twins, N.R. and N.N.R. (the children), who were born in 2000. The children have a variety of medical and developmental special needs and at age twelve functioned at the level of six- to eight-year-olds. Since their birth, V.R. has secured a wide variety of services for the children, including individual and family therapy, in-home behavioral services, respite foster care, special-education services, and personal-care attendants (PCAs). V.R. has voluntarily placed the children in foster care at different times over the years, and both children have received inpatient mental-health treatment multiple times. The children's father, A.B., has not participated in their upbringing. V.R. and the children had lived with V.R.'s boyfriend, L.J., since 2007.

On January 24, 2013, police were dispatched to the family's home in response to a report of a physical domestic assault. V.R. had been out drinking with her older son to celebrate his 21st birthday, leaving the children at home with L.J. Upon V.R.'s return late that night, an altercation occurred that resulted in V.R. calling 911. L.J. left before the police arrived. V.R. had multiple visible injuries, which she attributed to L.J., that Chisholm police officer Paul Panichi photographed. V.R. informed Officer Panichi that N.R. had attempted to intervene and that L.J. had shoved him, causing N.R. to bite his tongue and injure it. N.R.'s statement corroborated V.R.'s account of his tongue injury, which the officer also photographed. The following day, V.R. contacted the police and

requested that charges against L.J. be dropped. Domestic-assault charges were ultimately dismissed.

In early April, the St. Louis County Public Health and Human Services Department (the county) began an assessment of the family. The county had received multiple allegations of abuse of the children by V.R. and L.J., including (1) L.J. shoving N.R. on January 24 and injuring his tongue, (2) L.J. spanking N.R. with a belt, and (3) V.R. using handcuffs to restrain N.R. In mid-April, while the county's investigation was underway, police were dispatched to two additional incidents involving the family.

On April 17, V.R. voluntarily placed N.N.R. in foster care. On April 22, Chisholm police signed a 72-hour hold for the children. On April 25, the county petitioned the court to adjudicate N.N.R. and N.R. as CHIPS. The next day, the district court granted temporary custody of the children to the county. A series of out-of-home placements of varying lengths and degrees of success followed.

A five-day trial on the petition was held in July and August of 2013. Twelve witnesses testified, including V.R., Officer Panichi, and several social workers and therapists. Recorded interviews with the children were also admitted into evidence. Various witnesses testified regarding the children's behaviors and need for services while living at home versus in out-of-home placement.

Officer Panichi testified that V.R. and N.R. told him on January 24 that L.J. had shoved N.R., causing him to bite his tongue and injure it. He further testified that V.R. reported to him that L.J. had assaulted her on 15 previous occasions, and that V.R. had shown him photos of injuries from these earlier assaults. V.R. testified that she had no

recollection of telling the police that L.J. had assaulted her that night or on any previous occasion and denied that she had any photos of injuries. She testified that her ex-husband had abused her in the past, but not L.J.

On September 23, 2013, the district court adjudicated N.N.R. and N.R. as CHIPS. The district court found that (1) N.R. has been a victim of physical abuse, child abuse, and domestic child abuse; (2) N.N.R. resided with or has resided with an abuse victim; (3) N.N.R. and N.R. resided with a perpetrator of domestic child abuse; (4) V.R. perpetrated physical abuse against N.R.; and (5) L.J. committed child abuse and domestic child abuse against N.R. The district court therefore concluded that N.N.R. and N.R. met the CHIPS definitions found in Minn. Stat. § 260C.007, subd. 6(2)(i), (ii), (iii). The district court also concluded that “the children are without the special care made necessary by a physical, mental, or emotional condition because the child’s parent is unable or unwilling to provide that care,” and therefore met the CHIPS definition found in Minn. Stat. § 260C.007, subd. 6(4). This appeal follows.

D E C I S I O N

Minn. Stat. § 260C.007, subd. 6 (2012), requires proof that one of the enumerated child-protection grounds exists and that the child needs protection or services as a result. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 728 (Minn. App. 2009). 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).

Under Minn. Stat. § 260C.007, subd. 6(2)(i), a child is in need of protection or services if he has been a victim of physical abuse as defined in Minn. Stat. § 626.556, subd. 2 (2012). Section 626.556, subdivision 2(g), provides that “physical abuse” includes “any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child’s care on a child other than by accidental means.”

The district court found that L.J. physically abused N.R. on January 24 when he pushed him and caused him to bite his tongue. Appellant argues that the evidence was insufficient to support these findings. But appellant concedes that if the district court properly found physical abuse, child abuse, or domestic child abuse, the district court properly concluded that N.R. and N.N.R. resided with a victim or perpetrator of child abuse or domestic child abuse, thus satisfying the CHIPS grounds in Minn. Stat. § 260C.007, subd. 6(2)(ii), (iii).

There was ample evidence at trial regarding the altercation on January 24. More than half the witnesses testified regarding what they knew or had learned about it. Officer Panichi testified that both V.R. and N.R. told him that L.J. shoved N.R., causing him to bite his tongue. Police reports and a photograph of N.R.’s tongue injury were admitted into evidence. A social worker testified that the children’s accounts to him of the January 24 incident were consistent with the information contained in the police reports and that the children’s “stories were the same each time I talked with them.” A second social worker testified that N.R. told her that on January 24, L.J. had pushed him

into a door when N.R. tried to intervene in L.J.'s assault of his mother. Recorded interviews of N.R. and N.N.R. were also played for the district court and admitted into evidence.

V.R. argues that the district court erred in relying on her statements and the children's statements because all three lacked credibility and that, without these statements, the evidence was insufficient to support a finding that L.J. injured N.R. The district court heard testimony that the children had "problems with honesty" but nevertheless found that there was clear and convincing evidence that L.J. had pushed N.R. and caused him to bite his tongue. And the district court expressly discredited V.R.'s testimony regarding January 24, noting that "[t]he court does not find believable [V.R.'s] testimony that the reason she told Officer Panichi that she had been abused multiple times by [L.J.] was because she had been traumatized by the abuse of [her ex-husband]." We defer to the district court's determination of witness credibility. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). Our review of the entire record does not leave us with the "definite and firm conviction that a mistake has been made." *See B.A.B.*, 572 N.W.2d at 778 (quotation omitted). The district court's finding that L.J. pushed N.R., causing him to bite his tongue, is supported by substantial evidence and is not clearly erroneous.

As previously noted, V.R. concedes that if there was sufficient evidence to uphold the finding that L.J. pushed N.R. and that he was injured as a result, the conduct meets the statutory definition of child abuse and domestic child abuse. We agree. We conclude, based on the evidence in the record regarding the January 24 incident, that the

district court properly adjudicated both N.R. and N.N.R. as CHIPS within the definition of Minn. Stat. § 260C.007, subd. 6(2)(i), (ii), (iii), because N.R. was a victim of physical abuse, child abuse, and domestic abuse; N.N.R. resided with him; and both resided with L.J. Because the district court properly adjudicated N.R. and N.N.R. as CHIPS within the definition of Minn. Stat. § 260C.007, subd. 6(2)(i), (ii), (iii), we affirm on that basis and do not reach appellant's other issues.

Affirmed.