

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1023**

In the Matter of the Welfare of the Child of:
H. F. C., Parent.

**Filed January 22, 2013
Affirmed
Kirk, Judge**

Crow Wing County District Court
File No. 18-JV-11-4093

John P. Chitwood, Chitwood & Davey, PLLC, Saint Paul, Minnesota (for appellant V.K.B.)

Donald F. Ryan, Crow Wing County Attorney, Janine L. LePage, Assistant County Attorney, Brainerd, Minnesota (for respondent Crow Wing County)

Melanie Dotty, Pequot Lakes, Minnesota (for respondent H.F.C.)

Eli Loven, Pequot Lakes, Minnesota (guardian ad litem)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant V.K.B. challenges the district court's adjudication of H.J.B. as a child in need of protection or services (CHIPS) pursuant to Minn. Stat. § 260C.007, subd. 6 (2012). We affirm.

FACTS

On September 19, 2011, two Crow Wing County investigators visited the home of V.K.B., in response to a report of methamphetamine use by V.K.B. and her husband, M.B., guardians of H.J.B.¹ The investigators encountered V.K.B. outside the home with H.J.B., and M.B. was inside the home. V.K.B. was sweating, talking fast, averting eye contact, and exhibiting signs of “tweaking.” When the investigators looked inside the home, they found it was in disarray and in overall poor condition.

The investigators instructed M.B. and V.K.B. to report with H.J.B. to produce urine and hair samples for drug screening. They did not appear for the testing. The county sought, and the district court granted, a pick-up-and-hold order. The county also filed a CHIPS petition, pursuant to Minn. Stat. § 260C.007, subs. 6(3), (8), and (9).

H.J.B. was taken into custody and the district court conducted an emergency protective care hearing. At the conclusion of the hearing, the district court ordered V.K.B. to submit to hair and urine testing. Those tests confirmed the presence of methamphetamine in V.K.B.’s hair and urine. A hair sample from H.J.B. also tested positive for methamphetamine.

During and immediately before the trial, V.K.B. tested positive for methamphetamine. She also failed to appear for several urine tests ordered by the county.

¹ H.J.B. was in the custody of M.B. and V.K.B. because his biological mother, H.F.C., executed a delegation of parental authority appointing them to serve as H.J.B.’s guardians shortly after he was born. In August 2011, a district court awarded V.K.B. custody of H.J.B.

In May 2012, the district court adjudicated H.J.B. as a child in need of protection or services pursuant to Minn. Stat. § 260C.007, subds. 6(8) and (9), and ordered him placed in the care of his biological mother, H.F.C., subject to protective supervision by the county. We affirm.

D E C I S I O N

We are “bound by a very deferential standard of review” of factual findings on appeal from a district court’s CHIPS determination. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (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).

The district court rendered its CHIPS determination based on two statutory bases. First, the district court found that H.J.B. “is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child’s . . . guardian.” Minn. Stat. § 260C.007, subd. 6(8). Second, the court relied on Minn. Stat. § 260C.007, subd. 6(9), which provides that an environment that is “injurious or dangerous to the child or others” justifies a CHIPS determination. “An injurious or dangerous environment may include, but is not limited to, the exposure of a child to criminal activity in the child’s home[.]” *Id.*, subd. 6(9).

The district court’s conclusions are supported by substantial evidence. H.J.B. tested positive for methamphetamine, which, according to expert testimony, was ingested by H.J.B. within 90 days of the test. V.K.B. tested positive for methamphetamine prior to trial and during the trial. She provided no viable explanation for why the tests were

positive. M.B. admits to being a methamphetamine addict and to using the drug about two weeks before he testified at trial. The state presented ample evidence that V.K.B. and M.B. continue to see each other, despite divorcing shortly after H.J.B. was taken into custody. The district court heard and relied on substantial evidence that H.J.B. was without proper parental care and was in an injurious and dangerous environment.

V.K.B. also contends that the district court violated her rights under the Fourth Amendment to the United States Constitution by considering the results of state-mandated urinalyses. She never challenged the admissibility of these tests at the district court. We will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.