STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0882

In the Matter of the Welfare of the Child of:
J. B. T., Parent

Filed November 25, 2013
Affirmed
Chutich, Judge

Clay County District Court
File No. 14-JV-13-654

Mara K. Rausch, Moorhead, Minnesota (for appellant mother)

Johnathan R. Judd, Assistant Clay County Attorney, Moorhead Minnesota (for respondent)

Thomas Joseph Nolan, Jr., Nolan Law Offices, Minneapolis, Minnesota (for guardian ad litem)

Considered and decided by Rodenberg, Presiding Judge; Chutich, Judge; and Klaphake, Judge.*

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

CHUTICH, Judge

Appellant challenges the district court's order adjudicating her son a child in need of protection or services, arguing that the evidence is insufficient to support the district court's conclusion and that the district court abused its discretion by admitting the child

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

protection assessment summary into evidence. Because clear and convincing evidence shows that the child is in need of protection or services, and because the district court did not abuse its discretion in admitting the challenged document, we affirm.

FACTS

J.B.T. is the biological mother of D.J.T., born September 29, 2008. D.J.T. was diagnosed with pervasive developmental disorder, which is an autism spectrum disorder, and attention deficit hyperactivity disorder. Kristen Hettwer, a personal care attendant (PCA), assists J.B.T. with D.J.T. for five hours per day.

J.B.T. sustained a traumatic brain injury in a car accident several years ago and has been diagnosed with adjustment disorder with depression and histrionic personality disorder. On February 4, 2013, J.B.T. had outpatient neck surgery. She was prescribed several narcotic pain medications, and Hettwer worked extra hours to help J.B.T. with D.J.T. after the surgery.

On February 19, Vanessa Goodell, a mental health worker with Solutions, Inc., visited J.B.T.'s apartment. The apartment was very messy, with toys and clothes scattered all around and dirty dishes in the sink and on the counters. Cat feces were on the floor, an ice cream sandwich was smashed into the carpet in the living room, and a large T.V. was tipped over. When Goodell arrived, J.B.T. was asleep and D.J.T. was unsupervised. D.J.T. had a bruise under his eye. Goodell spoke with J.B.T., who appeared to be disoriented and nonsensical.

Because D.J.T. had a scheduled appointment at Solutions, Inc., Goodell took him to the appointment as planned. Because of her concerns regarding the state of the

apartment, the bruise under D.J.T.'s eye, and J.B.T.'s disoriented state, Goodell made a report to Clay County Social Services and the Moorhead Police Department.

Rachel Brause, the Clay County Social Services Child Protection Specialist, went to Solutions, Inc. to meet with D.J.T. She noted that D.J.T. had a bruise and dark circles under his eyes, the latter suggesting a lack of sleep. D.J.T. told Brause that he made a mess of his room while his mother was sleeping, that his bedroom door was locked, and that he hurt his eye when the T.V. fell. Brause placed D.J.T. in emergency foster care.

Brause spoke with J.B.T. at the apartment a few hours after D.J.T. was placed in emergency protective care. By that time, J.B.T. and Hettwer had cleaned the apartment. J.B.T. told Brause that the cat scratched D.J.T., which caused the bruise under his eye. J.B.T. admitted that she was sleeping while D.J.T. was awake from 5 a.m. to 8 a.m. and that she was unaware that he had made a mess in the apartment. Brause completed a child protection assessment summary, concluding that the home was unsafe and that the risk of neglect and abuse was high.

The county filed a petition alleging that D.J.T. is a child in need of protection or services (CHIPS) under Minn. Stat. § 260C.007, subd. 6 (2012). The district court held a trial on the county's petition. At trial, J.B.T. testified about her traumatic brain injury and her struggles with D.J.T. and his needs. She described D.J.T.'s tantrums and how she handles them, including using "relaxing sounds" and the "scent of lavender," "changing the color of the curtains," and at times "restraining him," which she claimed she was "trained to do." The district court noted that J.B.T. "has been an advocate for her son, whom she clearly loves very much" and that she "has genuine concern for her child and

his best interest." But the district court further noted that J.B.T.'s "demeanor and emotional state at trial was very concerning" because she was "overly dramatic with exaggerated emotions." The district court found that J.B.T. "did not demonstrate an understanding of how her own behaviors and choices negatively affect [D.J.T.] and that the environment he was living [in] was a safety risk for the child." The district court therefore concluded that J.B.T. "lacks the judgment and understanding to adequately parent [D.J.T.] without extensive support, parenting education, her own mental health management, and insight into how her actions and the environment in which she and [D.J.T.] live can adversely affect the child's development and safety" and adjudicated D.J.T. a child in need of protection or services. This appeal followed.

D E C I S I O N

I. Sufficiency of the Evidence

J.B.T. argues that "[t]he evidence does not support the [district] court's conclusion that [D.J.T.] is a child in need of protection or services." A child is in need of protection or services if the child "is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian." Minn. Stat. § 260C.007, subd. 6(8) (2012).

"The district court is vested with broad discretionary powers when deciding juvenile-protection matters." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009) (quotation omitted). "Typically, findings in a juvenile-protection proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence." *Id.* "A close review inquires into the sufficiency of the evidence to determine

whether the evidence is clear and convincing." *Id.* "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." *Id.* (quotation omitted).

"But when no motion for a new trial has been made—as is the case here—the questions for review include whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment." *Id.* (quotation omitted). "Our scope of review also includes substantive legal questions not raised in post-trial motions, but properly raised during trial." *Id.*

J.B.T. challenges several of the district court's factual findings. First, the district court found that "[t]here was allegedly a broken light bulb with shards of glass all over the floor." J.B.T. contends that "there was no evidence or testimony presented regarding any broken glass on the floor." But the child protection assessment summary, which was admitted into evidence, states that "[t]here was a broken light bulb with shards of glass all over the floor." Second, the district court found that "[i]t was reported that [J.B.T.] was talking about being related to the Queen of England" when Goodell arrived at her home. J.B.T. argues that "[t]here was no evidence presented by anyone in the trial that heard J.B.T. say these things." But, again, the child protection assessment summary states that J.B.T. "was making comments to include being related to the Queen of England." The record evidence therefore supports the district court's factual findings.

J.B.T. next asserts that a messy house is not clear and convincing evidence that D.J.T. is without proper parental care and that "[h]aving dark circles under your eyes as [D.J.T.] did does not show a child is in need of protection or services." J.B.T. essentially

contends that the evidence presented at trial does not support a conclusion that D.J.T. is a child in need of protection or services. "But we will not retry the case on appeal." *Id.* "An appellate court exceeds its proper scope of review when it bases its conclusions on its own interpretation of the evidence and, in effect tries the issues anew and substitutes its own findings for those of the trial judge." *Id.* (quotation omitted).

In this case, the district court's conclusion rested on more than its concerns about a messy apartment. It found not only that the apartment was dirty and in disarray, but that it was potentially dangerous because of cat feces and broken glass on the floor and a large, tipped-over T.V. In assessing the apartment's condition, the district court specifically discounted the testimony of Hettwer, who testified that the apartment was not dirty when she left on February 18 and that D.J.T. made the mess while J.B.T. was sleeping. *See id.* (stating that appellate courts defer to the district court because the district court "is in a superior position to assess the credibility of witnesses").

More importantly, the district court made specific findings concerning J.B.T.'s traumatic brain injury, demeanor, and emotional state, and the effect of her actions on D.J.T. It found that J.B.T. was disoriented and nonsensical when speaking with Goodell, the mental health worker, and that D.J.T. had a bruise and dark circles under his eyes that morning. The district court found that J.B.T.'s demeanor during trial was "very concerning," noting that her speech was "disjointed and it was extremely hard to follow her thought process." The district court further found that her "behavior has been so chaotic that she has been banned from going to Solutions, Inc. property." And the district court found that J.B.T. has cancelled some of the services that D.J.T.'s health care

providers have recommended, further demonstrating "her erratic behavior and impulsiveness." In addition, the district court noted that since being in foster care, D.J.T.'s behaviors have markedly improved, he is sleeping well, and he "has had few outbursts." Therefore, although the record evidence shows that J.B.T. loves D.J.T very much and has a "genuine concern for her child," the district court's factual findings are sufficient to sustain its conclusion that J.B.T. "lacks the judgment and understanding to adequately parent D.J.T." at this time.

II. Admission of the Child Protection Assessment Summary

J.B.T. argues that "[t]he [district] court improperly admitted the child protection assessment summary as evidence." J.B.T. objected to admission of the assessment summary as hearsay. The district court overruled J.B.T.'s objection, noting that Brause was there "to be cross [examined] about her report." A district court's ruling on admission of evidence is discretionary, and this court will not disturb an evidentiary ruling unless the district court has erroneously interpreted the law or abused its discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997). And "[e]ntitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Id*. at 46.

J.B.T. argues that "[t]his assessment contains numerous references that are clearly hearsay. It should not be admitted under the business records exception to the hearsay rule. This is not a business record." J.B.T. fails to define hearsay or explain the parameters of the business-record exception. And 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." *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (internal quotation omitted).

J.B.T. acknowledges that use of court-ordered evaluations should be encouraged because they are an invaluable aid to the court. *See Matter of Welfare of J.M.G.*, 376 N.W.2d 494, 497 (Minn. App. 1985). But she contends that this summary differs from court-ordered evaluations because it is not a report or summary from a medical provider, but is "hearsay gathered from different sources with unknown reliability." But J.B.T. fails to provide legal support for her conclusory statement that the child protection assessment summary is hearsay; that the child protection assessment summary is different than the court-ordered evaluation at issue in *J.M.G.* does not mean that it is inadmissible hearsay. Moreover, J.B.T. does not allege that she was prejudiced by admission of the child protection summary assessment, and she therefore fails to establish reversible error. *See Kroning*, 567 N.W.2d at 46.

Affirmed.