STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0277

In the Matter of the Welfare of the Children of:
H.M.S. and A.A.C., Parents.

Filed September 3, 2024
Affirmed
Smith, John, Judge[*]

Rice County District Court
File No. 66-JV-23-2467

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Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's adjudication of children to be in need of protection or services because (1) the record supports the district court's determination that there was a statutory ground for the adjudication, (2) the record supports the district court's determination that the adjudication is in the best interests of the children, and (3) the district court did not deprive the children of due process.

FACTS

This is an appeal from the district court's adjudication of children in need of protection or services (CHIPS). There are four adults and five children involved:

- A.C. is the father of child 3, child 4, and child 5; he lives with B.H. and is accused of sexually abusing B.H.'s child, child 1
- H.S. is the mother of child 3, child 4, and child 5
- B.H. is the mother of child 1 and child 2
- J.B. is the father of child 1 and child 2
- Child 1 is the child of B.H. and J.B.
- Child 2 is the child of B.H. and J.B.
- Child 3 is the child of H.S. and A.C.
- Child 4 is the child of H.S. and A.C.
- Child 5 is the child of H.S. and A.C.

During most of the events giving rise to these proceedings, A.C. was living with his romantic partner, B.H., along with B.H.'s two children—child 1 and child 2—and A.C.'s three children—child 3, child 4, and child 5. Child 3, child 4, and child 5 are the subjects of this petition and the appellants now on appeal.

The case arose in October 2023, when Rice County Social Services (the county) filed a CHIPS petition alleging that A.C. sexually abused child 1 for about three years. The petition made several other assertions, including that: A.C. paid child 1 not to report the abuse, child 1 was afraid to tell her mother about the abuse because she feared her mother would not believe her, child 1 was afraid A.C. would begin grooming child 2, and A.C. displayed violent behavior at home. Based on these allegations, the petition sought protection or services for A.C.'s three children—child 3, child 4, and child 5—on three statutory bases, Minn. Stat. § 260C.007, subds. 6(2), 6(8), and 6(9) (2022).

The county took immediate custody of child 3, child 4, and child 5. Following an emergency-protective-care hearing, the district court found that the petition stated a prima facie case that a juvenile-protection matter existed and that these three children would be endangered if returned to A.C.'s home. They were returned to the home of their mother, H.S. At the admit/deny hearing, H.S. entered a denial of the statutory grounds alleged in the petition and child 3, child 4, and child 5 were ordered to remain in her care.

The district court held an eight-day hearing in January 2024, during which it heard testimony from the five children, H.S., B.H., and the guardians ad litem, among others.[1] An overview of this testimony follows.

Child 1 was 17 years old at the time of the hearing. Her parents are B.H. and J.B. In 2020, child 1, child 2, and B.H. moved into A.C.'s home. His children, child 3, child 4, and child 5, also lived at the home. Child 1 lived in the home until September 2023, when A.C. and B.H. kicked her out of the house following an argument. According to child 1, A.C. ordered her to get out of his home, picked her up, and threw her out the door. Child 1 went to a friend's home and later spoke with the police. The following day, child 1 moved in with her aunt. Child 1 explained that she wanted to live with her aunt because she did not want to "stay[] in the same household as [A.C.]." She eventually told her aunt that A.C. had sexually abused her. Child 1's aunt reported these allegations to the police.

At the hearing, child 1 stated that the sexual abuse happened "[a]lmost daily" for about three years. The abuse began with "inappropriate touching" and progressed to sexual penetration. On occasion, A.C. gave child 1 money or bought her things to keep her quiet. Child 1 stated that A.C. also physically disciplined her by dragging her "by the ear" or picking her up and throwing her "like a sack of potatoes to the floor." Child 1 tried to speak to her mother about the abuse, but her mother did not believe her. She was also afraid that A.C. would begin sexually abusing her younger sister, child 2. Child 1 noted

[1] The hearing went forward as a combined hearing of two court files: (1) 66-JV-23-2467, involving child 3, child 4, and child 5, the children of H.S. and A.C.; and (2) 66-JV-23-2468, involving child 1 and child 2, the children of B.H. and J.B.

that she would not feel safe returning to the home and did not believe that her mother was "fighting for [her] safety and protection."

Child 2, child 3, child 4, and child 5 also testified at the hearing. These four children denied any knowledge of physical or sexual abuse against child 1. Child 2 stated that she often saw A.C. and child 1 arguing and once saw him break a chair after he picked it up and threw it on the ground. However, child 2 denied seeing A.C. physically discipline anyone. Child 3 likewise denied that A.C. was physically abusive. As for child 4, he agreed that people screamed, argued, and had disagreements in his home, but he stated that he never saw the arguments turn physical. Similarly, child 5 stated that she saw arguments at A.C.'s home but did not hear people screaming at each other and did not see anyone receive physical discipline. Child 2, child 3, child 4, and child 5 indicated that they were comfortable in the home and around A.C.

The district court also heard testimony from the mothers, B.H. and H.S.

B.H. testified that she never saw A.C. physically discipline child 1, pick her up and throw her, engage in inappropriate behavior, or have any type of sexual contact with her. She also never saw him physically discipline any of the other children. When asked about the incident in September 2023 when child 1 was thrown out of the house, B.H. stated that A.C. "never touched" child 1 but "scooped her underneath the armpits and drug her out onto the deck" and then "laid her down" on the ground before locking her out of the house.

H.S. is the mother of child 3, child 4, and child 5. She lived with A.C. for about 10 years and did not see him physically discipline the children during that time. She did not

see A.C. treat the children in a way that "trouble[d]" her and she did not have any concerns about the safety of the children in his care.

The guardians ad litem also testified. The guardian ad litem assigned to work with child 1 and child 2 urged the district court to consider child 1 and child 2 as children in need of protection or services. The guardian ad litem for child 3, child 4, and child 5 also made a statement to the district court asserting that the children should be adjudicated in need of protection or services.

Following the hearing, the district court concluded that the county had proved by clear and convincing evidence that all five children were in need of protection or services based on the statutory grounds alleged by the county. It therefore adjudicated the children in need of protection or services.

Child 3, child 4, and child 5 now appeal.

DECISION

On appeal, child 3, child 4, and child 5 argue that: (1) the evidence was insufficient to support the CHIPS adjudication, (2) the district court's best-interests findings are not supported, and (3) they were deprived of their due-process rights. For the reasons discussed below, we determine that at least one statutory ground supports granting the CHIPS petition, the record supports the district court's best-interests findings, and the children's due-process rights were not violated. For these reasons, we affirm.

I. The district court did not abuse its discretion by determining that the county proved the existence of a statutory ground for a CHIPS adjudication by clear and convincing evidence.

a. Standard of Review

A district court has broad discretion in deciding juvenile-protection matters. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321-22 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015). This court reviews a district court's factual findings for clear error. *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998). "A finding is clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred." *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014) (quotation omitted). A district court abuses its discretion "by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2002) (quotation omitted).

For the district court to adjudicate a child in need of protection or services, the county must prove the existence of one of the statutory child-protection grounds under Minn. Stat. § 260C.007, subd. 6 (2022), and show 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). The statutory grounds in the CHIPS petition must be proved by clear and convincing evidence. Minn. Stat. § 260C.163, subd. 1(a) (2022); Minn. R. Juv. Prot. P. 49.03. The clear-and-convincing standard is higher than a preponderance of the evidence and less than beyond a reasonable doubt. *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). A reviewing court inquires closely into the sufficiency of the evidence

to determine whether the evidence was clear and convincing. *S.S.W.*, 767 N.W.2d at 733. Additionally,

> [the] clear-error review does not permit an appellate court to weigh the evidence as if trying the matter de novo. Neither does it permit an appellate court to engage in fact-finding anew, even if the court would find the facts to be different if it determined them in the first instance. Nor should an appellate court reconcile conflicting evidence. Consequently, an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court.

In re Civ. Commitment of Kenney, 963 N.W.2d 214, 221-22 (Minn. 2021) (alteration in original) (emphasis omitted) (quotations and citations omitted); *see In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* on review of a juvenile-protection order), *rev. denied* (Minn. Dec. 6, 2021). Further, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.,* 554 N.W.2d 393, 396 (Minn. 1996).

b. Statutory Grounds for Adjudication

The district court determined that child 3, child 4, and child 5 were children in need of protection or services under Minnesota Statutes section 260C.007, subdivision 6(2). This section allows for a CHIPS adjudication if the child "resides with or has resided with a victim of child abuse as defined in subdivision 5 or domestic child abuse as defined in subdivision 13," or "resides with or would reside with a perpetrator of domestic child abuse as defined in subdivision 13 or child abuse as defined in subdivision 5 or 13." Minn. Stat. § 260C.007, subd. 6(2)(ii), (iii). "Child abuse" means an act that involves a minor victim

and constitutes one of several specific criminal offenses, including assault offenses and criminal-sexual-conduct offenses. *Id.*, subd. 5 (2022). "Domestic child abuse" includes "any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means," criminal-sexual-conduct offenses, and physical or sexual abuse. *Id.*, subd. 13(1)-(3) (2022).

Here, as to child 3, child 4, and child 5, the district court concluded that this subdivision applied and the children were in need of protection or services as a result because child 1 had been sexually abused by A.C., and these children would reside with a victim of domestic child abuse under subdivision 6(2)(ii), and a perpetrator of domestic child abuse under subdivision 6(2)(iii). We conclude that clear and convincing evidence supports these determinations.

i. Living with a Victim of Abuse

The district court found that child 1 was the victim of sexual and physical abuse because she was "repeatedly sexually abused by [A.C.] in their shared home" for about three years. The district court made extensive factual findings about the progression of the sexual abuse from touching to penetration, and about the effects of this abuse on child 1. The district court found child 1's testimony credible, noting that she had testified over the course of four days, that her testimony was consistent with her prior statements to the county and to law enforcement, and that her testimony supported her reasoning for not disclosing the abuse to her mother because she was afraid her mother would not believe her or keep her safe. Given these findings, the district court determined that child 1 was a

victim of domestic child abuse and that child 3, child 4, and child 5 resided with a victim of domestic child abuse under Minn. Stat. § 260C.007, subd. 6(2)(ii).

The record supports the district court's findings. Child 1 testified about the sexual abuse. She stated that she was sexually abused "[a]lmost daily," beginning at the end of her eighth-grade year in school and continuing until August 2023. The abuse began with "inappropriate touching." But when she was a freshman in high school, she woke up to a "sharp ripping pain" and realized that A.C. had put his penis into her vagina while she was asleep. A.C. continued to sexually abuse her "multiple times a week" until August 2023. Child 1 stated that A.C. sometimes gave her money or bought her things to encourage her to keep the abuse secret. She was afraid to tell her mother because when she complained about A.C.'s behavior in the past, her mother told her that A.C. "showed his love" by being affectionate and did not believe her. Child 1 also testified that A.C. physically disciplined her by dragging her by the earlobe if she did not listen, picking her up and throwing her "like a sack of potatoes to the floor," smashing chairs when he was angry, and picking her up and throwing her out of the house in September 2023. During the hearing, child 1 explained that she chose to live with her aunt after that time because she did not want to "stay[] in the same household as [A.C.]." She further stated that she would not feel safe returning to the home and did not believe that her mother was "fighting for [her] safety and protection."

On appeal, child 3, child 4, and child 5 assert that child 1's testimony is not credible. But it is this court's role to correct errors and not to reweigh the evidence. *See S.S.W.*, 767 N.W.2d at 733. Moreover, this court defers to the district court's ability to assess witness

credibility. *See L.A.F.*, 554 N.W.2d at 396 (giving the district court's credibility determinations deference in juvenile-protection matters). We decline to reweigh the district court's findings, which are supported by the record.

Child 3, child 4, and child 5 also argue that there is no evidentiary support for the district court's conclusion that they are in need of protection or services as a result of the sexual abuse. *See S.S.W.*, 767 N.W.2d at 728 (advising that the district court must find facts supporting a determination that a child requires protection or services). However, a review of the record shows that the district court made this required determination and supported it with factual findings drawn directly from the testimony. Specifically, the district court found that although H.S. has custody of child 3, child 4, and child 5, she allows them to reside with A.C. The district court found that H.S. and B.H. do not seem to have any concerns regarding A.C., "even after hearing the testimony of child 1 and having reviewed all exhibits in this case." It was further clear to the district court that if something else happened in the home, "these [c]hildren would not seek help." Based on the testimony presented, the district court believed that a "code of silence" was enforced in the home, which would chill any future reports of abuse. The court concluded that:

> [t]hese Children need protection or services at this time as [A.C.] has not engaged in any services to mitigate the danger to any Child that would reside in his household. Th[e] fact that the Children are [his] biological children does not make them safe. [H.S.] does not believe that sexual abuse occurred and will not protect the Children, she will allow them to reside with

> [A.C.] and have unfettered contact with [A.C.] without court involvement.

Because the evidence supports the district court's findings that A.C. physically and sexually abused child 1, and the district court considered and determined that child 3, child 4, and child 5 consequently needed protection and services as a result, we conclude that the district court did not abuse its discretion in adjudicating these children as CHIPS on the basis of living with a victim of sexual abuse under subdivision 6(2)(ii).

ii. Living with a Perpetrator of Abuse

For the same reasons, the district court found that a CHIPS adjudication was warranted because A.C. sexually and physically abused child 1, and because child 3, child 4, and child 5 resided with or would be residing with a perpetrator of domestic child abuse under Minn. Stat. § 260C.007, subd. 6(2)(iii). The district court determined that the children were "residing in the home with [A.C.] and child 1 at the time that the sexual abuse occurred." As discussed above, the district court made thorough factual findings about this sexual and physical abuse and found that child 1's testimony was credible.

The district court further found that protection and services were warranted as a result of this abuse. It noted that H.S. would continue to allow child 3, child 4, and child 5 to reside with A.C. and did not have any concerns about A.C.'s treatment of the children. Based on its findings and credibility determinations, the district court found by clear and convincing evidence that child 3, child 4, and child 5 were in need of protection or services because A.C. sexually abused child 1 while they were residing in his home. Further, the district court determined that the children were therefore in need of protection or services

because A.C. had not "engaged in any services to mitigate the danger to any [c]hild that would reside in his household," and due to its concern that the children would not seek help if abuse occurred in the future.

Because the district court found facts supporting a statutory ground for adjudication and facts supporting a determination that child 3, child 4, and child 5 consequently required protection or services as a result, we determine that the district court did not abuse its discretion in adjudicating these children as CHIPS under subdivision 6(2)(iii).[2]

II. The district court did not abuse its discretion in determining that a CHIPS adjudication was in the best interests of the children.

Child 3, child 4, and child 5 challenge the district court's best-interests determination. "The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2022). "The laws relating to the juvenile protection proceedings shall be liberally construed to carry out these purposes." *Id.*, subd. 4 (2022). In permanency proceedings, "best interests of the child" includes all relevant factors. Minn. Stat. § 260C.511(a) (2022). This includes the relationship between the child and relatives, between the child and other key persons

[2] The district court also determined that child 3, child 4, and child 5 were children in need of protection or services under Minnesota Statutes section 260C.007, subdivision 6(2)(i) (physical abuse), subdivision 6(8) (deprivation of proper parental care), and subdivision 6(9) (injurious or dangerous environment). Based on our determination that a statutory ground supports the CHIPS adjudication; we need not address these alternative bases.

the child has lived with, and between the child and others with whom the child has had significant contact. Minn. Stat. § 260C.511(b) (2022).

The district court determined that it was in the best interests of child 3, child 4, and child 5 to remain in the legal and physical custody of their mother, H.S. On appeal, they argue that a CHIPS adjudication is not in their best interests because they want to continue living with their father, and they fault the district court for failing to honor this preference. *See, e.g., In re Welfare of Child of K.K.,* 964 N.W.2d 915, 923 (Minn. 2021) (noting that "a child's testimony may carry considerable weight in a district court's decision, particularly with respect to preference as to custody").

Child 3, child 4, and child 5 effectively ask this court to reweigh the evidence. The district court explained why it believed it was in the best interests of these children to be placed with their mother. It expressed concern "that if something else were to happen in [A.C.'s] residence, these [c]hildren would not seek help" because the environment "was one of a code of silence." The district court noted that A.C. had not engaged in any services to mitigate the danger to the children. Further, the district court concluded that "[t]he fact that [child 3, child 4, and child 5] are [A.C.'s] biological children does not make them safe." These determinations are amply supported by the district court's factual findings.

Determination of a child's best interests is "generally not susceptible to an appellate court's global review of a record," particularly because of the credibility determinations involved. *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003); *see also In re Welfare of Child. of M.A.H.*, 839 N.W.2d 730, 744 (Minn. App. 2013). Based on the record before this court, and in light of the deference afforded to the district court's credibility

determinations, we conclude that the district court's best-interests findings do not constitute an abuse of discretion.

III. The district court did not violate the due-process rights of child 3, child 4, and child 5.

Child 3, child 4, and child 5 argue that the district court violated their due-process rights. The United States and Minnesota Constitutions provide that the government may not deprive an individual of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. An appellate court reviews a due-process challenge de novo. *In re Welfare of Child. of B.J.B.*, 747 N.W.2d 605, 608 (Minn. App. 2008). We determine, based on this review, that the district court did not commit any due-process violations.

a. Discovery Ruling

Child 3, child 4, and child 5 argue that they were deprived of a fair hearing in violation of their due-process rights. "Due process requires reasonable notice, a timely opportunity for a hearing, the right to counsel, the opportunity to present evidence, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record." *In re Welfare of Child. of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). Here, they contend that the district court permitted certain parties to file witness and exhibit lists up to 11 hours beyond the deadline set forth in the scheduling order. They assert that these

late submissions caused "significant hardship" as they prepared for the hearing and argue, further, that the district court should have sanctioned the offending parties.

We do not agree. "[T]he amount of process due in a particular case varies with the unique circumstances of that case." *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008). The applicable due-process standard for juvenile proceedings is fundamental fairness. *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971). On the first day of the hearing, counsel for child 3, child 4, and child 5 objected to the late disclosures and urged the district court to impose sanctions or dismiss the petition. *See* Minn. R. Juv. Prot. P. 17.06, subd. 4 (permitting a district court to grant a continuance or "enter such order as it deems just under the circumstances" for a discovery violation). The district court declined to do so, noting that the proceedings had already been delayed and that it was "extremely important that this case move forward." Given the unique circumstances of the case, and in light of the juvenile-protection deadlines, the district court denied the request to delay the hearing or dismiss the petition. We are satisfied that it acted within its "broad discretionary powers" in doing so. *S.S.W.*, 767 N.W.2d at 733 (quotation omitted).

We determine, further, that child 3, child 4, and child 5 were not prejudiced by this decision. "Although the amount of process due in a particular case varies with the unique circumstances of that case, prejudice as a result of the alleged violation is an essential component of the due[-]process analysis." *B.J.-M.*, 744 N.W.2d at 673 (citations omitted). Here, the parties had a full and fair opportunity to be heard. Under the rules specific to juvenile placement and safety, a child and the child's parent, guardian, or custodian "are entitled to be heard, to present evidence material to the case, and to cross-examine

witnesses appearing at the hearing." Minn. Stat. § 260C.163, subd. 8 (2022). These rights were fully satisfied here. The parents contested the CHIPS petition and both H.S. and B.H. testified during the hearing. The five children also testified. Additionally, the attorneys for the parties, along with counsel for the guardians ad litem, conducted thorough cross-examinations of the witnesses.

We conclude that the district court properly balanced the parties' interests in preparing for the hearing against the need for securing justice for the children. Thus, because child 3, child 4, and child 5 were afforded a meaningful adversarial hearing, the district court's discovery rulings did not give rise to a due-process violation.

b. Burden of Proof

Child 3, child 4, and child 5 also argue that the district court violated their due-process rights by failing to hold the county to its burden of proof. They contend that the district court "predetermine[d]" that Child 1 was a "victim," and criticize the district court's credibility determinations. We likewise reject this argument.

On appeal from a juvenile-protection proceeding, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *L.A.F.*, 554 N.W.2d at 396; *see also J.H.*, 844 N.W.2d at 39 ("On matters of credibility and the weight to be given the testimony of witnesses, we defer to the juvenile court."). Here, the district court presided over eight days of hearings, took testimony from a number of witnesses, and released a 36-page order. This order contains 135 factual findings. Among other things, the district court made specific credibility findings as to each of the witnesses and explained why it found each witness's testimony

credible or not credible. While child 3, child 4, and child 5 are displeased with these factual findings and credibility determinations, it is not our role to find facts in the first instance on appeal. *See Kenney*, 963 N.W.2d at 221-22. We therefore deny their request to reverse on this ground.

Affirmed.