STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1095

In the Matter of the Welfare of the Child of: C. D. T. and A. S. M., Parents.

Filed January 23, 2023
Affirmed
Larson, Judge

Itasca County District Court
File No. 31-JV-22-852

Bill L. Thompson, Duluth, Minnesota (for appellant father C.D.T.)

Matti R. Adam, Itasca County Attorney, Michael J. Haig, Assistant County Attorney, Grand Rapids, Minnesota (for respondent Itasca County Human Services)

Megan Dyan Bond, International Falls, Minnesota (for mother A.S.M.)

Rachel Weis, Grand Rapids, Minnesota (for stepmother Cr.D.T.)

Kim Allen, Grand Rapids, Minnesota (guardian ad litem)

Considered and decided by Cochran, Presiding Judge; Larson, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant-father C.D.T. (father) challenges the district court's order adjudicating his minor child in need of protection or services (CHIPS). Father also challenges whether

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

Itasca County Health and Human Services (human services) made reasonable efforts to avoid and prevent an out-of-home placement for the child. We affirm.

FACTS

This appeal concerns the minor child (the child), of father and A.S.M. (mother). After father and mother ended their relationship, father married Cr.D.T. (stepmother). The child resided with father and stepmother who were both responsible for the child's care. And often, due to father's work schedule, stepmother acted as the child's sole caregiver.

In July 2021, human services initiated a CHIPS investigation related to allegations made by stepmother's teenage daughter. As a result, father and stepmother both agreed to a safety plan. Amongst other requirements, the safety plan stated: (1) "[father and stepmother] will use no physical discipline in their homes" and (2) "[c]onsequences for [the] children['s] actions should be given in the form of a timeout, privilege's taken away[,] . . . and added chores/responsibilities." Despite the safety plan, the child reported that father and stepmother gave the child the choice to be physically disciplined or have privileges taken away. The child reported that this was a family secret.

On March 30, 2022, stepmother dropped the child off at school. The child's teacher (teacher) testified that she observed that the child had a swollen and bloody lip. She also noticed that the child had a "withdrawn" demeanor and "a visible marking on his face." When she asked the child what happened, the child replied: "My mom did it."[1] Teacher reported this information to the school's principal (principal), and teacher and principal

[1] The child later identified stepmother as "mom."

interviewed the child. The child told teacher and principal that his stepmother was mad at him so she "hooked her finger in [his] mouth . . . [with] this long fingernail." Principal testified that the child "was having a hard time with his lip," and described the child's lip as "puffy," "bloody," and "looked like a fat lip."

Teacher and principal reported the incident to law enforcement. Upon receiving the report, the Itasca County Sheriff's Department sent an investigator along with a human-services investigator to the school to interview the child. The child told the investigators that, earlier that morning, stepmother grabbed his lip and cut his lip with her fingernail. Investigators then asked the child when stepmother injured his lip, and the child responded that it happened "[t]oday" at "my house" while father was "at work." The child told investigators that he was "very sad" when stepmother made his lip bleed. The child also informed the investigators that he only felt safe at home when he has "a good day" at school. Investigators put the child in a 72-hour police hold. The state criminally charged stepmother, and the district court issued a domestic abuse no contact order (DANCO) prohibiting stepmother from interacting with the child.

On April 4, 2022, human services filed a CHIPS petition regarding the child and placed the child with a nonrelative foster-care placement. In May 2022, human services created a placement plan, detailing the efforts made or attempted to prevent the child's out-of-home placement. At the end of the school year, human services placed the child with mother, who lived in a different school district.

The district court held an evidentiary hearing. The district court received several pieces of evidence and heard witness testimony, including testimony from stepmother, teacher, principal, and the investigators.

The district court heard testimony regarding the child's documented behavioral issues at school. Stepmother testified that the child's behavior frustrates her. Stepmother testified that on March 30, 2022, she drove the child to school in the morning. Before the drop off, she scolded the child because he had a behavioral issue at school the prior day. She admitted that she "pulled [the child] by the ear," and "cupped his chin with the palm of [her] hand," but denied grabbing the child's lip.

On July 25, 2022, the district court adjudicated the child CHIPS. The district court determined that human services made reasonable efforts to avoid and prevent out-of-home placement. But because the district court concluded the placement was necessary and in the child's best interests, the district court ordered the placement to continue.

Father appeals.

DECISION

Father challenges the district court's decision that the child meets the statutory criteria for a CHIPS adjudication under Minn. Stat. § 260C.007, subd. 6 (2020). Father also argues that the district court incorrectly determined that human services made reasonable efforts to avoid and prevent the child's out-of-home placement under Minn. Stat. § 260.012 (2020).[2] We address each argument in turn below.

[2] Although father did not cite section 260.012, or any other statutory authority, we interpret his argument to rely on section 260.012.

We review a district court's CHIPS determination using "a very deferential standard of review." *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 734 (Minn. App. 2009). We review the district court's "factual findings for clear error." *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015). "In applying the clear-error standard, we view the evidence in a light favorable to the findings." *In re Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (citation omitted). We "will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *Id.* (quotation omitted). We will not reverse a district court's decision to adjudicate CHIPS absent "a clear abuse of discretion." *S.S.W.*, 767 N.W.2d at 734 (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. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)); *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in a juvenile-protection appeal), *rev. denied* (Minn. Dec. 6, 2021).

I.

Father first argues the district court abused its discretion when it adjudicated the child CHIPS under Minn. Stat. § 260C.007, subd. 6(8), (9). As relevant to this appeal, section 260C.007, subdivision 6, defines "a [c]hild in need of protection or services" to include a child who:

> (8) 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;
>
> (9) is one whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others. 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.

Human services bears the burden to show, by clear and convincing evidence, that a child meets the CHIPS definition. *See S.S.W.*, 767 N.W.2d at 730.

A. Subdivision 6(8)

Father argues the district court abused its discretion when it concluded human services presented clear and convincing evidence that the child is without proper parental care pursuant to section 260C.007, subdivision 6(8). We are not persuaded.

The district court concluded the child lacked proper parental care under subdivision 6(8) and supported that decision with the following findings. Although this is the first child-protection case regarding the child, father and stepmother had a preexisting safety plan in place with human services. In the safety plan, father and stepmother expressly agreed that they would "use no physical discipline." Despite the safety plan, when the child misbehaved, the child was given "a choice of physical discipline, the use of a paddle[,] or taking away the privilege of electronics." Further, stepmother physically disciplined the child on March 30, 2022. Stepmother "grabbed [the child] and cut his lip with her fingernail because she was mad . . . he had a bad day at school the day prior." The district court's findings are supported by clear and convincing evidence in the record, including the testimony of teacher, principal, and investigators. We conclude that both

parents' willingness to use physical discipline despite the existing safety plan and stepmother's inability to restrain her impulse to use physical discipline show that the child lacked proper parental care. *See* Minn. Stat. § 260C.007, subd. 6(8).

Father contends this record is insufficient to show a lack of proper parental care *as to father*. According to father, human services presented no evidence suggesting that he could not properly care for the child. We are not persuaded. First, father cites no legal authority for the contention that the district court must separately analyze father's behavior. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (noting we do not address inadequately briefed arguments); *Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 372 (Minn. App. 2011) ("[E]rror is not presumed on appeal, and the burden of showing error rests on the party asserting it."). Second, this record supports the district court's decision to analyze this father's and this stepmother's abilities to parent the child jointly. *See, e.g.*, *In re Welfare of T.P.*, 747 N.W.2d 356, 361 (Minn. 2008) (explaining district courts may terminate parental rights on the basis that a child suffered egregious harm while in the parent's care even when the parent did not personally inflict the harm or was not physically present when the harm occurred); *In re Welfare of S.A.V.*, 392 N.W.2d 260, 263 (Minn. App. 1986) ("Abuse by a parent, or knowledge of abuse by another without taking corrective action is clear evidence of emotional disability or immaturity of a parent."). The record shows that father and stepmother live together in the same home with the child. Both father and stepmother are responsible for the child's care. And often, due to father's work schedule, stepmother is the child's sole caregiver. Further, and particularly important in this case, the record contains evidence that father is willing

to use physical discipline despite the safety plan; i.e., that father apparently approves of stepmother's use of physical discipline and deems compliance with the safety plan optional. Thus, father's characterization that there is no evidence as to his conduct is not supported by the record.

For these reasons, the district court did not abuse its discretion when it determined that 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); *see S.S.W.*, 767 N.W.2d at 735.

B. Subdivision 6(9)

Father argues the district court abused its discretion when it concluded human services presented clear and convincing evidence to meet the standard in section 260C.007, subdivision 6(9). Father argues the district court abused its discretion because the child's swollen and bloody lip alone, does not meet the subdivision 6(9) standard to show a behavior, condition, or environment" that is "injurious or dangerous to the child." *See* Minn. Stat. § 260C.007, subd. 6(9).

We disagree with father's characterization that the district court relied solely on the child's lip injury to support its decision that the home may be dangerous to the child. To support its conclusion that the child met the subdivision 6(9) standard, the district court made the following findings. The child reported that he received the lip injury from his stepmother because he had bad behavior at school the prior day. The child then stated that he only felt safe at home when he has "a good day" at school. The district court found that the child often had behavioral issues at school and that stepmother admitted that the child's

behavior at school frustrates her and triggered her conduct on March 30, 2022. And the district court found both father and stepmother are willing to use physical discipline when the child acts out. We discern no clear error in the district court's findings, and its findings are supported by the record, including the testimony of teacher, principal, investigators, and stepmother.

The district court found the child reasonably feared being at home with father and stepmother—especially on days where he had behavioral issues at school. Therefore, the district court did not abuse its discretion when it determined that immediately reunifying the child with father and stepmother could expose the child to a dangerous or injurious environment under subdivision 6(9). *S.S.W.*, 767 N.W.2d at 735.

II.

Father argues that the district court abused its discretion when it determined that human services made reasonable efforts to prevent the child's removal. Pursuant to Minn. Stat. § 260.012(a), when the district court adjudicates a child CHIPS, it must:

> ensure that reasonable efforts, . . . by the social services agency are made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time . . . . In determining reasonable efforts to be made with respect to a child and in making those reasonable efforts, the child's best interests, health, and safety must be of paramount concern.

Human services makes a reasonable effort to prevent placement of a child when it "work[s] with the family to develop and implement a safety plan that is individualized to the needs of the child and the child's family"; or when "the agency has demonstrated to the [district] court that, given the particular circumstances of the child and family at the time of the

child's removal, there are no services or efforts available that could allow the child to safely remain in the home." Minn. Stat. § 260.012(d). Here, the district court determined that human services made reasonable efforts to avoid and prevent the out-of-home placement of the child. The district court's determination is not against logic or the facts in the record.

Human services initially removed the child on March 30, 2022, using a 72-hour peace officer hold, based on human services' previous interactions with the family,[3] and the child's lip injury and report. The previous interactions included father and stepmother's explicit agreement in the July 2021 safety plan not to use physical discipline. At the time of the initial removal, the district court issued a DANCO, prohibiting stepmother from having contact with the child.

At trial, the state presented evidence that in April 2022, human services placed the child in a nonrelative foster placement. Human services made this placement after the child's lip injury and the child's report that he did not always feel safe at home. At the time, the DANCO was still in place, the CHIPS petition had not yet been adjudicated, and there were pending criminal charges against stepmother. During the same month, as part of the out-of-home-placement plan, human services prepared a proposed update to the July 2021 safety plan that included steps for father and stepmother to take for a potential

[3] The district court noted that human services had received over 20 intake reports regarding father and his family and that human services had made at least one prior maltreatment determination for the pending CHIPS matter related to mother's teenage daughter. The district court acknowledged that this was the first CHIPS action regarding the child, but that interventions short of a CHIPS petition had been attempted prior to the July 2021 safety plan that were not successful. The district court further found that "[father] has not been receptive to the suggestions of [human services] to engage in services in prior cases opened by [human services]."

reunification with the child. At the time the district court issued its order, father had not signed the updated safety plan. But the proposed update included "therapy, diagnostic assessments, parenting capacity assessments, medication management services if applicable, visitation services, and in-home family services." The district court noted that the proposed services were "intended to build skills for safe and healthy parenting, healthy growth and development of the child, and to promote a safe and stable home for the parents, child, and the entire family."[4]

Based on the evidence presented at the time of the hearing, the district court did not abuse its discretion when it determined that human services had made reasonable efforts to prevent the child's removal pursuant to section 260.012. *See D.L.D.*, 865 N.W.2d at 323. Human services had previously worked "with the family to develop and implement a safety plan," but the family had failed to follow the safety plan. *See* Minn. Stat. § 260.012(d)(1). Further, the evidence presented at trial sufficiently demonstrated that at the time of immediate removal, there were no services or efforts available—short of the child's removal—to ensure the child was safe at home. *See id.*, (d)(2).

Affirmed.

[4] Notably, since the district court's decision, human services has continued reunification efforts. According to a report filed in August 2022, these efforts included the following: meeting "with [father and stepmother] in person and by phone to implement an appropriate safety plan," and "working with the family to address the needs, concerns, and issues in the home in order to support reunification."