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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0211**

In the Matter of the Welfare
of the Children of:
T.R.K. and D.A., Parents.

**Filed July 8, 2008
Reversed and remanded
Klaphake, Judge**

Rice County District Court
File No. 66-JV-07-2886

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Considered and decided by Minge, Presiding Judge; Klaphake, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

This case concerns whether the events surrounding the in-home death of four-
month-old K.K. can support a CHIPS adjudication as to her siblings, D.A. and D.T.A.,

who were three and six years old at the time of K.K.'s death. The district court dismissed respondent Rice County's CHIPS petition following a trial, and the guardian ad litem challenges that ruling in this appeal. Because the district court's findings on the statutory criteria are not supported by substantial evidence and therefore do not support its decision to dismiss the CHIPS petition, we reverse and remand.

D E C I S I O N

“The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services [CHIPS] is the health, safety, and best interests of the child.” Minn. Stat. § 260C.001, subd. 2 (2006). At a CHIPS trial, the court must “determine whether the statutory grounds set forth in the petition are or are not proved[,]” Minn. R. Juv. P. 39.01, and “the burden of proof in the district court is ‘clear and convincing’ evidence.” *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998); Minn. Stat. § 260C.163, subd. 1 (2006) (requiring CHIPS allegations to be proved by “clear and convincing evidence”); Minn. R. Juv. Prot. P. 39.04, subd. 1 (same). “Findings in a CHIPS proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence.” *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996); *see generally In re Welfare of J.M.S.*, 268 N.W.2d 424, 426 (Minn. 1978) (ruling evidence amply supports findings). This court reviews questions of law, “such as the interpretation of the statutory criteria for adjudicating a CHIPS petition,” *de novo*. *In re Welfare of the Children of N.F.*, 735 N.W.2d 735 (Minn. App. 2007), *aff’d in part, rev’d in part*, 749 N.W.2d 802 (Minn. 2008).

The CHIPS petition enumerates three statutory grounds for alleging that D.A. and D.T.A. are in need of protection or services. The first is that the children “resided with a victim of domestic child abuse.” Minn. Stat. § 260C.007, subd. 6(2) (2006). The definition section of this statute states that “domestic child abuse” is “any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means[.]” *Id.*, subd. 13 (2006).¹

The trial record includes the following evidence that would support finding that the conduct of T.R.K., the mother of the children, towards K.K. met the statutory definition of domestic child abuse for purposes of a CHIPS trial. T.R.K. lived alone with her children, was solely responsible for K.K.’s care, and on the night of K.K.’s death placed K.K. to sleep on her stomach near T.R.K. in her bed, which contained laundry. She also typically made up K.K.’s bottle and admitted that she “most likely” made K.K.’s last bottle; no trial evidence suggests that another person made K.K.’s bottle. The bottle was spiked with alcohol, and the level of alcohol found in K.K.’s blood led a medical examiner to conclude that alcohol affected K.K.’s respiration and was a contributing factor in her death, which was from parental overlay or positional asphyxia. Other suspicious conduct that occurred on the night of K.K.’s death, including the fact that D.A.

¹ The supreme court recently corrected an error in Minn. Stat. § 260C.007, subd. 6(2)(ii), which defines a child “in need of protection or services” as one who has “resided with a victim of domestic child abuse as defined in subdivision 5.” *In re Welfare of the Children of N.F.*, 749 N.W.2d 802 (Minn. 2008). Minn. Stat. § 260C.007, subd. 5 (2006) defines “child abuse,” while subdivision 13 defines “domestic child abuse.” The supreme court referred to the statutory reference to subdivision 5 as an “apparent error,” noted that the legislature had recently changed the reference to subdivision 13, and stated that subdivision 13 applies to Minn. Stat. § 260C.007, subd. 6(2)(ii). *N.F.*, 749 N.W.2d at 806 n.1.

and D.T.A. were not awakened by the loud commotion that took place after K.K.'s death, suggested that they also may have been under the influence of alcohol. All of this evidence would have supported a finding that K.K.'s death was due to domestic child abuse. K.K.'s death was a "physical injury," and the harm to her was "inflicted" by T.R.K., an adult family member, by other than accidental means. See Minn. Stat. § 260C.007, subd. 6(2)(ii); *see also, e.g., In re Welfare of B.M.*, 383 N.W.2d 704, 708 (Minn. App. 1986) (referencing threatened poisoning of a child by a family member as "physical abuse" in termination of parental rights proceeding), *review denied* (Minn. May 22, 1986).

Despite this evidence, the district court made the following relevant findings:

25. The petitioner [Rice County] has presented no evidence as to who or why alcohol was put in the baby's bottle except to point to the mother and argue she should be responsible for those acts.

27. There has neither been any showing that the mother was abusing the minor child nor has there been any showing that the mother put alcohol in the baby's bottle or that the mother's child rearing is so suspect that services are needed. We take our families the way we find them.

Appellant suggests that the district court may have held Rice County to the high standard of proof for culpability in criminal proceedings rather than the clear and convincing evidence standard applicable in CHIPS proceedings. Although it is not apparent from the record whether this occurred, we conclude that the district court's findings are clearly erroneous and unsupported by substantial evidence in the record. See *In re A.R.M.*, 611 N.W.2d 43, 50 (Minn. App. 2000) ("Findings in CHIPS proceedings

are not reversed unless clearly erroneous or unsupported by substantial evidence.”) (citations omitted).

The county alleged two other grounds for the CHIPS petition: (1) under Minn. Stat. § 260C.007, subd. 6(8) (2006), D.A. and D.T.A. were “without proper parental care because of [T.R.K.’s] emotional, mental or physical disability, or state of immaturity; and (2) under Minn. Stat. § 260C.007, subd. 6(9) (2006), D.T.A. and D.A. were children “whose behavior, condition, or environment is such as to be injurious or dangerous to the child or others,” which specifically includes “exposure of the child to criminal activity in the child’s home.” *Id.* Again, the district court failed to specifically address these statutory criteria, made a generalized finding contrary to an adjudication of CHIPS, and concluded that neither statutory ground had been satisfied. As to these statutory grounds, the trial record is not fully developed, in large part because T.R.K. declined to cooperate with Rice County’s CHIPS investigation. For example, she refused to provide required urine samples and refused to submit to a chemical dependency assessment. The record shows, however, that K.K. died after being in T.R.K.’s care, that the home environment may not have been child-safe, that T.R.K. or someone whom she allowed in the home put alcohol in K.K.’s bottle, and that T.R.K. resisted admitting but eventually did admit to drug and alcohol use. As to the children’s home environment, the circumstances surrounding K.K.’s death could have constituted criminal acts of child endangerment or negligent care, both of which meet the definition of “criminal activities” in a CHIPS proceeding.

For all of these reasons, we conclude that the district court's findings and ultimate conclusions are clearly erroneous and unsupported by substantial evidence. We therefore reverse and remand for further proceedings consistent with Minn. R. Juv. Prot. P. 39, subd. 3. Upon remand, the district court may, in its discretion, admit additional evidence, hear additional argument, or decide the matter on the existing record.

Because of our disposition, we decline to address other issues raised by appellant.

Reversed and remanded.