STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1918

In the Matter of the Welfare of the Child of: V. R. B. and W. J. B., Parents.

Filed June 2, 2009
Affirmed; motion denied
Connolly, Judge

Hennepin County District Court
File No. 27-JV-08-1972

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Considered and decided by Peterson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

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

CONNOLLY, Judge

The district court terminated appellants' parental rights to their minor child after finding that appellants (1) had subjected the child to egregious harm, (2) were palpably unfit to be parties to a parent-child relationship, and (3) had failed to correct the

conditions which led to the child's out-of-home placement. The district court also denied appellants' request that permanent legal and physical custody be transferred to a relative. Appellants challenge these decisions and also argue that the district court abused its discretion by admitting certain documentary evidence. We affirm. We also deny appellants' motion to strike certain statements from respondent-guardian ad litem's brief.

FACTS

Appellant-mother V.B. and appellant-father W.B. were arrested on February 19, 2008 and charged with felony third-degree assault and gross misdemeanor malicious punishment of a child[1] for physically abusing their four-year-old minor child, D.B.[2] Police officers responding to the family's home, transported the child to Hennepin County Medical Center because of the nature and extent of visible physical injuries on his body. At the emergency room, physicians determined that it was clinically certain that the child had been physically and emotionally abused. Dr. Linda Thompson, a pediatrician and child-abuse expert, examined the child and found the child to have bruising and abrasions over his entire body. Those injuries were inflicted by mother and father using their hands, a belt, a stick, and a spatula. The extent, number, and pattern of the injuries established that they were not accidental. These injuries occurred when mother and father forcefully grabbed the child's arms; struck the child's back; struck his legs, buttocks, and groin; pulled his ear with significant force; and pulled "very hard" on his clothing.

[1] These charges were still pending at the time of the trial in this case.
[2] The parties were not married at any time prior to or during the proceedings in this case, but it is undisputed that appellant-father is the father of the minor child.

Mother and father admitted hitting the child, claiming they did it to discipline him. During interviews with police, both parents admitted hitting various parts of the child's body. Father described folding his belt and using it to strike the child.

The child reported receiving "whoopings" from his parents, and that his parents struck him with a switch and a belt. The child stated that father pulls on his ears and sometimes pushes him so hard he falls over. The child also reported that he is sometimes forced to stand in a corner with one leg raised in the air, and if the leg falls, he is beaten and forced to start again.

On February 22, 2008, the child was put in an out-of-home foster care placement and a petition for termination of parental rights (TPR) was filed against appellants.

Mother and father, along with child-protection social workers, put together a voluntary out-of-home placement plan to address permanency and safety for the child. Mother completed a parenting assessment required by the case plan, but failed to complete the intense parenting program or the less intensive Genesis II parenting program recommended by the assessment. Mother also completed a psychological evaluation and submitted to several urinalyses (UAs), which were all negative. However, mother failed to obtain and maintain safe and suitable housing, and was homeless at the time of the trial. At trial, mother maintained that the abuse she and father committed against the child was a form of discipline, denied the seriousness of the abuse, and continued to endorse the use of corporal punishment.

Father was ordered to (1) submit to a parenting assessment, (2) comply with mental health services, (3) submit to random UAs, (4) obtain and maintain safe and

suitable housing, and (5) successfully complete anger management training. Father completed the majority of these requirements, but failed to obtain housing and was homeless at the time of trial. Following father's parenting assessment, the assessor recommended that father should not be reunified with the child under any circumstances. The district court also noted father's extensive history of mental illness.

The district court addressed mother's petition to transfer permanent legal and physical custody of the minor child to a relative, but did not find any of the proposed placement options to be appropriate permanent placement options for the child. The district court concluded that the child had suffered egregious harm, that appellants were palpably unfit to be parties to a parent-child relationship, and that appellants had failed to correct the conditions which led to the out-of-home placement of the child, and determined that it would be in the child's best interests if appellants' parental rights to the child were terminated.

Mother filed a notice of motion and motion for new trial on October 17, 2008. Father filed a notice of motion and motion for new trial on October 20, 2008. Father's motion was not timely filed.[3] The district court denied both motions. This appeal follows.

[3] Minn. R. Juv. Prot. P. 45.01, subd. 1 requires that a notice of motion and motion for new trial be filed within 15 days following the service of notice of the decision.

D E C I S I O N

I. The district court did not err in ordering that mother's and father's parental rights to the child be terminated.

On appeal from a termination of parental rights, the reviewing court closely inquires into the sufficiency of the evidence to determine whether the evidence is clear and convincing. *In re Welfare of J.M.*, 574 N.W.2d 717, 724 (Minn. 1998); *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). An appellate court "exercises great caution in termination proceedings, finding such action proper only when the evidence clearly mandates such a result." *S.Z.*, 547 N.W.2d at 893.

> [Appellate courts] review the termination of parental rights to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous. We give considerable deference to the district court's decision to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing. We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made reasonable efforts to reunite the family.

In re Welfare of Children of S.E.P., 744 N.W.2d 381, 385 (Minn. 2008) (citations omitted). On review, "[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).

"[O]n appeal in a termination of parental rights case, while we carefully review the record, we will not overturn the trial court's findings of fact unless those findings are clearly erroneous." *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995).

The district court terminated appellants' parental rights to the minor child based upon three statutory grounds: (1) infliction of egregious harm, (2) palpable unfitness, and (3) failure to correct conditions. Appellants argue that the district court's determination that their rights should be terminated on each of these grounds was in error.

A. Infliction of egregious harm.

Minnesota Statutes section 260C.301, subdivision 1 (2008) provides, in relevant part:

> The juvenile court may upon petition, terminate all rights of a parent to a child:
>
> . . . .
>
> (b) if it finds . . . :
>
> . . . .
>
> (6) that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

Egregious harm is defined as "the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2008). Egregious harm includes, but is not limited to, conduct towards a child that constitutes felony malicious punishment of a

child,[4] felony neglect or endangerment of a child,[5] or assault in the first, second, or third degree.[6] *Id.*

The district court made numerous findings of fact related to the nature and extent of the child's injuries. After his parents' arrest, the child was taken to Hennepin County Medical Center due to the nature and extent of the visible injuries on the child's body where physicians "concluded that it was clinically certain that [the child] had been physically and emotionally abused." The child "had entire body bruising and abrasions," which were inflicted by his parents. The district court found that the injuries were not accidental, but were caused by mother and father striking the child with their hands, a belt, a stick, and a spatula. Appellants admitted to striking the child in order to discipline him. Father admitted to striking the child with his belt. The child stated that he was forced to stand in a corner with one leg up in the air, and if that leg dropped, he was hit by his parents, and forced to repeat this process. The child was repeatedly subjected to this type of punishment.

The child's injuries occurred when "his parents forcefully grabbed his arms, struck his back with hands or a belt, and struck his legs, buttocks and groin area with hands and a belt." Appellants also injured the child by forcibly pulling on his ear and by grabbing his clothing and pulling very hard on it. "Some of the [c]hild's injuries were over vital areas of the body, such as the head and spine."

[4] Minn. Stat. § 609.377 (2008).
[5] Minn. Stat. § 609.378 (2008).
[6] Minn. Stat. §§ 609.221, .222, .223 (2008).

Appellants do not dispute the accuracy of the district court's findings of fact. The district court concluded that there was clear and convincing evidence that the child experienced egregious harm in his parents' care of a nature, duration, or chronicity that indicated a lack of regard for the child's well being. This conclusion is supported by the record.

Appellants' arguments that there had been no previous complaints about their treatment of the child and that they only used physical punishment as a means of discipline not because they enjoyed it, are unavailing. The statute requires only a finding that the child suffered egregious bodily harm of a nature, duration, or chronicity that indicates a lack of regard for the child's well being. Minn. Stat. § 260C.301, subd. 1(b)(6). The definition of egregious harm does not include a consideration of the parents' intent behind their conduct. Minn. Stat. § 260C.007, subd. 14. It is true that not all corporal punishment rises to the level of requiring intervention through a child-protection proceeding. *See In re Welfare of Children of N.F.*, 749 N.W.2d 802, 810 (Minn. 2008) (declining to hold that any infliction of pain upon a child constitutes physical abuse or injury and concluding that the legislature did not intend to ban corporal punishment for purposes of a child-in-need-of-protection-or-services proceeding). But conduct towards a child which causes either physical or mental injury to the child, and which is beyond the bounds of "reasonable discipline" may still give rise to a child-protection matter. *Id.* at 810-11 (noting that a child is in need of protection or services if "there is physical conduct toward the child that causes either physical injury, or mental injury").

Moreover, appellants concede that they improperly physically punished their child, but argue that such punishment did not last more than two to three weeks. This argument, too, is unavailing. Appellants present no authority to support an argument that abuse over such a time frame was too brief to come within the purview of the statute.

Appellants argue that, while the statute states that the district court "may" terminate parental rights upon a finding of egregious harm, such a finding alone does not mandate termination. The district court did not state that it was obligated to terminate appellants' parental rights based on a finding of egregious harm. Rather, the district court concluded that there was clear and convincing evidence that the child had suffered egregious harm of a nature, duration, or chronicity that indicated a lack of regard for the child's well being, and that it was in the child's best interests that appellants' parental rights be terminated. This is consistent with the statute. *See* Minn. Stat. § 260C.301, subd. 1(b)(6).

Appellants also argue that the statutory requirement of conduct whose nature, duration, or chronicity indicates a lack of regard for the child's well being is not satisfied in this case because the harm occurred only over a short period, the parents immediately admitted their wrongdoing and apologized, and the parents cooperated with child protection and social workers and completed significant amounts of case planning. Appellants' argument requires a conjunctive reading of the statute, such that the harm suffered by the child must have been of a nature, duration, *and* chronicity which would indicate a lack of regard for the child's well being. This is inconsistent with the disjunctive language of the statute, which allows for a finding as to the nature, duration,

or chronicity of the harm suffered. *Id.* Appellants do not present any authority to support an argument that there must be clear and convincing evidence of the nature, duration, and chronicity of the harm to support a finding that the child has suffered egregious harm. Also, appellants present no authority to support an argument that the district court is required to consider a parent's remorse for his or her actions, willingness to admit wrongdoing, or cooperation with case workers when determining if a child has suffered egregious harm. No such considerations are required by statute. *Id.*, Minn. Stat. § 260C.007, subd. 14.

The district court's undisputed findings of fact are supported by clear and convincing evidence that the harm suffered by the child here is of a nature, duration or chronicity that indicates a lack of regard for the child's well being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care. The district court's findings regarding the harm suffered by the child are supported by the record. The district court properly terminated appellants' parental rights to the child based upon the egregious harm suffered by the child at the parents' hands.

B. Palpable unfitness.

The district court may also terminate a parent's rights to parent his or her child if the district court finds

> that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that

> renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd 1(b)(4). "In each case, the actual conduct of the parent is to be evaluated to determine his or her fitness to maintain the parental relationship with the child in question so as to not be detrimental to the child." *S.Z.*, 547 N.W.2d at 892 (quotation omitted). If "the evidence indicates that within a foreseeable time, the parent will be able to care for the child, then the district court should decline to terminate parental rights and should establish a supervised plan to give custody to the parent with whatever counseling and assistance is appropriate." *Id.* A termination of parental rights based on a finding that a parent is palpably unfit to be a party to a parent-child relationship "requires that the [district] court make the determination of whether reasonable efforts have been made to rehabilitate the parent and to reunite the family, even if that determination is that provision of services for the purpose of rehabilitation is not realistic under the circumstances." *Id.* The county must show, by clear and convincing evidence, "a consistent pattern of specific conduct or specific conditions *existing at the time of the hearing* that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008) (emphasis added) (quotation omitted).

Appellants cite *In re Welfare of M.H.*, 595 N.W.2d 223 (Minn. App. 1999), for the proposition that if rehabilitative efforts offered by the county are accepted by the parent, there can be no termination based on a finding of palpable unfitness. This is not an

accurate reading of *M.H.* In *M.H.*, Blue Earth County asked this court to review the denial of a TPR petition. The petition alleged, inter alia, that the parent in that case was palpably unfit to be a party to the parent-child relationship. *M.H.* is distinguishable from this case. In *M.H.*, the district court found that the parent was psychologically scarred by domestic abuse, which was a contributing factor to her failure to bring the proceedings to a favorable conclusion early in the process. *Id.* at 227. However, the district court focused on the parent's situation as it existed at the time of trial and found that she had "in fact made *significant* progress in fulfilling the [placement] plan and her failures to comply could not be blamed entirely on her." *Id.* The district court found that there were several contributing reasons beyond the parent's control which contributed to her failure to comply fully with the plan. *Id.* The district court ultimately determined that the parent was not palpably unfit to be a party to the parent-child relationship. *Id.* This is not the case here.

Here, in addition to the findings relating to the harm suffered by the child noted above, the district court also found that mother has a low IQ and a verbal learning disability. The district court noted that despite participation in two separate parenting programs, mother has been unable to learn proper parenting skills. Mother continues to endorse the type of corporal punishment inflicted on her child. A psychologist and parenting assessor testified that mother's "rigidity, continuing endorsement of corporal punishment, and lack of understanding of the child's needs creates a risk of further abuse to the child." The district court found that father "continues to suffer from serious mental health issues and continues to endorse corporal punishment." The district court also

found that "[t]he physical and emotional abuse to [the child] amounted to a consistent pattern of specific conduct which was of a nature that renders these parents unable, for the foreseeable future, to care appropriately for the ongoing physical, mental and emotional needs of the child." The district court concluded that there was clear and convincing evidence that appellants were palpably unfit to be parties to the parent-child relationship because (1) they caused the child "extreme physical and emotional harm," (2) they "minimize their actions and refuse to fully admit the nature of the abuse," and (3) "[t]hey are unable to safely parent this child or meet his needs now or in the foreseeable future."

Appellants argue that their cooperation with case workers and their compliance with case plans cut against the district court's findings that they are palpably unfit to parent, but they do not elaborate how. They also argue that the specific conditions which existed at the time they were arrested were largely remedied by the time of the hearing. We disagree.

The district court noted appellants' cooperation with case workers in forming a voluntary out-of-home placement plan, and their cooperation with requirements of that plan. But the district court also noted several deficiencies in appellants' compliance. Mother failed to complete a parenting program, despite being placed into a less intensive program than recommended, because she failed to comprehend and apply the information even with some one-on-one instruction. The district court also found that mother's psychological assessment noted she had a pattern of paranoia and associated cognitive distortions, she is prone to significant misinterpretation of events and other's motives,

and is likely to act based on her misinterpretations. The district court noted mother's low verbal and performance IQ scores, and her failure to follow through with continuing psychiatric appointments. The court found that mother is homeless and lives with a friend, despite offers of supportive housing. The district court found that father completed a parenting assessment, but the results of that assessment indicated a significant risk for further abuse and recommended against reunification.

Appellants argue that their mental health issues and mother's developmental delay do not preclude them from parenting. "[M]ental illness, in and of itself, does not 'permit termination of parental rights.'" *T.R.*, 750 N.W.2d at 661 (quoting *In re Welfare of Kidd*, 261 N.W.2d 833, 835 (Minn. 1978)). As appellants note, many cases involving allegations of palpable unfitness involve parents suffering from mental illness. But, as highlighted above, the district court's determination that appellants are palpably unfit to parent the child here is based only in part upon their respective mental illnesses. The district court considered "the actual conduct of the parent[s] to determine fitness to parent." *Id.* (quotation omitted). As in *Kidd*, appellants' mental illnesses are not grounds for a finding of palpable unfitness simply because they are mentally ill, but rather because such mental illnesses are likely to be detrimental to the child. *See Kidd*, 261 N.W.2d at 834, 836; *see also T.R.*, 750 N.W.2d at 661-62. Appellants' mental illnesses here are one of several factors which led the district court to find "a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *T.R.*, 750 N.W.2d at 661 (quotation omitted).

Appellants do not allege any specific errors with the district court's findings of fact as related to their fitness to parent. The district court's findings are supported by the record and are not clearly erroneous. Those findings support the district court's conclusion that appellants are palpably unfit to be parties to a parent-child relationship with the minor child.

C. Failure to correct conditions.

The district court also found that appellants' parental rights to the minor child should be terminated because of appellants' failure to correct the conditions leading to the child's out-of-home placement.

The district court may terminate a parent's rights to parent his or her child if the district court finds "that following the child's placement out of the home, reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child's placement." Minn. Stat. § 260C.301, subd. 1(b)(5).

As previously discussed, the district court made extensive findings regarding appellants' cooperation with their case workers and their compliance with their case plans. The record demonstrates that appellants did make appreciable efforts to comply with their placement plans. Appellants again cite *M.H.*, arguing that perfect compliance with a case plan is not required to avoid termination. *See M.H.*, 595 N.W.2d at 228 (holding that statutory criteria for failure to correct conditions were not satisfied where mother had "completed many conditions of the plan" but failed to complete a parenting assessment after being advised by her attorney not to do so). But as previously stated, *M.H.* is distinguishable from the facts of this case.

In finding that appellants failed to correct the conditions which led to the child's out-of-home placement, the district court found that appellants were offered appropriate services, but they "continue[d] to minimize the abuse inflicted upon the child and [did] not fully acknowledge the trauma to their son." The district court noted that mother continues to endorse corporal punishment. The court also noted that father's parenting assessment determined he was at "significant risk for further abuse to the child and recommended against reunification." The court noted that both parents were homeless at the time of the trial and were residing with friends. The district court found that mother and father were clear in their intent to remain together as a couple. The district court stated that while appellants have accomplished much within their case plans, "they have not integrated information in order to safely parent [the child] or to meet [the child's] needs," and that their minimization of the abuse hinders their ability to correct their behavior and meet the child's needs. The district court found that it was in the child's best interests that appellants' parental rights be terminated, as appellants cannot keep the child safe now or in the foreseeable future, either parenting alone or as a couple.

The district court's findings are supported by clear and convincing evidence in the record that demonstrates that appellants failed to correct the conditions which led to the child's out-of-home placement.

II. The district court did not err by denying mother's and father's request that legal custody of the child be transferred to a relative.

Appellants argue that it was error for the district court to deny their petition to transfer legal custody of the minor child to family members.

In cases where a child is placed in foster care, the district court is required to hold a permanency hearing within 12 months of the child's placement in foster care. Minn. Stat. § 260C.201, subd. 11(a) (2008). At the conclusion of these permanency proceedings, the district court may either return the child to the custodial parent, or order a termination of the custodial parent's parental rights or a transfer of permanent physical and legal custody to a relative, if such transfer is in the best interests of the child. Minn. Stat. § 260C.201, subd. 11(c)-(d). Before the district court orders a transfer of permanent legal and physical custody to a relative, the court must review the suitability of the prospective custodian. Minn. Stat. § 260C.201, subd. 11(d)(1). "As in termination of parental rights cases, the reviewing court determines on appeal whether the trial court's findings address the statutory criteria and are supported by substantial evidence, or whether they are clearly erroneous." *In re Welfare of A.R.G.-B.*, 551 N.W.2d 256, 261 (Minn. App. 1996) (quotation omitted). The district court's findings of fact shall not be set aside unless clearly erroneous. *Id.*

Appellants' first choice for placement of the minor child was with Bernice Brown, the child's paternal grandmother. The district court found that Brown, who lived in Mississippi at the time of trial, appeared at a July 2008 family group conference to express her willingness to care for the child. However, the district court also found that Brown endorses the use of corporal punishment as a form of discipline and that the child could not be disciplined using any form of corporal punishment due to the "severe emotional trauma caused by the physical abuse" by mother and father. The district court found that no home study was conducted with Brown, that she did not appear to testify at

trial, and that the district court received no further information as to her ability and appropriateness to parent the child. The district court stated that Brown was not an appropriate permanent placement option because the court could not evaluate her as a caregiver based on the information available to the court.

Appellants' second choice for a permanent placement for the child was Carrie Dortch, the child's maternal aunt. With regard to Dortch, the district court found that mother had previously resided with Dortch, but that no home study of Dortch had been conducted. The district court also noted that Dortch did not appear to testify at the trial. The district court found that Dortch would not be an appropriate permanent placement option because the district court lacked sufficient information to evaluate Dortch as a caregiver.

The district court seemed to suggest that a third option, James Calicutt, the child's paternal grandfather, would be a more appropriate permanent placement option as the child had been in foster-care placement with Calicutt since April 2008, the child was bonded with Calicutt and felt safe with him, and Calicutt had expressed a willingness to adopt the child. However, as the district court noted, at the time of trial, father was no longer agreeable to transfer legal and physical custody of the child to Calicutt.

Appellants do not allege error in any of the findings relating to these three people. Rather, appellants state that it is not surprising that the district court and the witnesses at the trial lacked sufficient information about Brown and Dortch because no home studies were ever completed. Appellants argue that the county failed to complete the home studies because it felt that Calicutt was a more appropriate placement option. Appellants

complain about the lack of home studies for either Brown or Dortch, but provide no authority to demonstrate that the county was bound to conduct them. As respondent argues, the county had already secured an appropriate placement alternative with Calicutt. We agree with respondent that conducting these home studies would have been counter to the county's statutory objective to achieve early permanency for children who are placed in foster care by court order, as set forth in Minn. Stat. § 260C.213, subd. 1(b)(1) (2008).

Appellants argue that the record does not contain clear and convincing evidence that termination of their parental rights was a superior alternative to transfer of legal and physical custody of the child. But it is not clear from the statute that this is the appropriate standard. When the county files a petition either for transfer of permanent legal and physical custody of a child in foster care or for termination of parental rights, the allegations in the petition must be proved by clear and convincing evidence. *A.R.G.-B.*, 551 N.W.2d at 261 (transfer of legal and physical custody); *J.M.*, 574 N.W.2d at 724 (termination of parental rights). But appellants point to no authority that requires clear and convincing evidence that one alternative is preferable to another available under Minn. Stat. § 260C.201, subd. 11. The statute states that, following a permanency hearing, the district court must either return the child to the custodial parent, or utilize one of the other specified options. *Id.* In choosing between alternatives, the statute requires that the district court "be governed by the best interests of the child, including a review of the relationship between the child and relatives and the child and other

important persons with whom the child has resided or had significant contact." *Id.* at subd. 11(e).

The district court stated that it was considering the best interests of the child in terminating appellants' parental rights, and that it had reviewed the relationships, or lack thereof, between the child and the proposed custodians. The district court complied with the statutory requirements in evaluating appellants' petition for transfer of legal and physical custody. The district court's findings are supported by the record, and those findings support the district court's conclusion.

III. The district court did not abuse its discretion by admitting certain documentary evidence.

Mother alleges that the district court abused its discretion by admitting documents into evidence for which the proper foundation had not been laid to establish that the documents were business records, and which contained multiple-level hearsay. [7]

> The admission of evidence rests within the broad discretion of the trial court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion. Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error. In the absence of some indication that the trial court exercised its discretion arbitrarily, capriciously, or contrary to legal usage, the appellate court is bound by the result.

[7] Appellants concede that, since father's motion for a new trial was not timely filed, he is precluded from raising this issue on appeal. *See In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994) (stating that evidentiary rulings are subject to review in juvenile cases only if they were assigned as erroneous in a motion for a new trial), *review denied* (Minn. Nov. 29, 1994).

Kroning v. State Farm Auto. Ins. Co., 567 N.W.2d 42, 45-46 (Minn. 1997) (citations and quotations omitted). "Evidentiary rulings concerning materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence are within the trial court's sound discretion and will only be reversed when that discretion has been clearly abused." *Johnson v. Wash. County*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted).

Mother argues that this court has established a clear rule for the admission of business records into evidence at trial in a child-protection case, citing *In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003). Mother argues that this rule is not followed by the district courts and is "deliberately ignored" by county attorneys and counsel for guardians ad litem in cases such as this. Mother notes multiple documents which were objected to on grounds of insufficient foundation, hearsay, prejudicial effect, lack of relevancy, cumulative effect, and preparation in anticipation of litigation. Mother fails to cite to a specific exhibit which she argues was improperly admitted. Mother similarly fails to highlight any erroneous reasoning representing an abuse of discretion committed by the district court in admitting documents. Mother argues that the cumulative effect of wrongly admitted documents affects the facial fairness of the trial and the parties' perception of the fairness of the trial, but mother gives no indication which documents these may be.

"'An assignment of error based on mere assertion and not supported by any argument or authorit[y]. . . is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.'" *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons*

Carpet Co., 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)). On appeal, "error is never presumed. It must be made to appear affirmatively before there can be reversal. Not only that, but the burden of showing error rests upon the one who relies upon it." *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (quotation omitted).

Also, as the guardian ad litem argues in its brief, mother failed to raise any arguments regarding improperly admitted documentary evidence in her motion for a new trial. No hearing was held on the motion. The district court's order denying mother's motion for a new trial addresses each of the grounds raised by mother in her motion filings, but makes no reference to any alleged errors in the admission of any documentary evidence. In her reply brief, mother argues that this issue was preserved in her motion for a new trial because she alleged "errors of law occurring at the trial and objected to by counsel," again with no indication of what those errors may have been and without reference to any improperly admitted documents. Mother again seeks to rely on mere assertion, which is insufficient to allege error by the district court. Because no error was assigned to the admission of any documentary evidence in mother's motion for a new trial, any such allegations of error are not properly subject to appellate review and are waived. *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App. 1994) (citing *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986)), *review denied* (Minn. Nov. 29, 1994).

We also note that appellants, in their reply brief, brought a motion to strike certain quotations from the guardian ad litem's brief, arguing that such statements were from a portion of a document which had been redacted prior to its admission at trial, and

therefore the statements in question were not admissible and are not part of the record of this case. Because we rely solely on the findings of fact made by the district court and because the statements which are the focus of appellants' motion had no effect on our decision, appellants' motion to strike is denied.

Affirmed; motion denied.