STATE OF MINNESOTA
IN COURT OF APPEALS
A09-922

In the Matter of the Welfare of the Child of:
C. A. P. and E. E. G., Parents.

Filed October 20, 2009
Affirmed
Minge, Judge

Itasca County District Court
File No. 31-JV-09-448

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

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

MINGE, Judge

Appellant-mother challenges the district court's determination that her 15-year-old daughter is a child in need of protection or services (CHIPS). We affirm.

FACTS

S.J.G. is a fifteen-year-old girl. Her mother is appellant C.A.P. (mother). Since her parents' divorce in 1997, S.J.G. has lived with mother, her older brother, and (since 1999) R.C., mother's boyfriend. Mother and R.C. met in Texas. In 2001, the family and R.C. moved to Warroad. In 2008, mother lost her job. Mother is financially reliant on R.C.

In 2008, S.J.G. told mother that she was sexually abused by R.C., but mother did not believe her. In late January 2009, in a high-school test regarding child abuse, S.J.G. wrote "back off; I don't want to talk about me." The teacher referred S.J.G. to a school counselor. In response to the counselor's questions, S.J.G. responded that she had been subjected to sexual abuse. The counselor immediately arranged for S.J.G. to see a Roseau County social worker.

The same day as S.J.G. made the abuse disclosures in school, she met with the social worker. A male police officer observed the interview through a camera, because S.J.G. said she was not comfortable talking with the social worker in the officer's presence.

In the social-worker interview, S.J.G. stated that R.C. had been inappropriately touching her since she was seven and that the first instance of abuse occurred in Texas, when R.C. had S.J.G. watch and assist him masturbate. She stated that other abuse took place once the family moved to Warroad. She reported that R.C. would "tackle [her] to the bed and take off [her] pants and stuff and like act like he was about to rape [her], but he'd just touch [her]." S.J.G. stated that, as she physically matured, R.C. occasionally

entered her bedroom while she watched TV and would touch and lick her breasts. Finally, S.J.G. told the social worker that in January 2008, R.C. entered her room intoxicated while her mother was working a late-night shift, that he "took [S.J.G.'s] panties off and . . . pried open [her] legs and like fingered [her]," and that R.C. instructed her not to tell anyone about the abuse.[1]

The social worker referred S.J.G. to a pediatric psychologist. S.J.G. told the psychologist that she was a victim of inappropriate touching and recounted some of the details given earlier to the social worker. The psychologist found her statements plausible and genuine.

On January 26, mother placed a telephone call to the police officer who had observed the interview with the social worker and handed S.J.G. the phone. S.J.G. told the policeman that she had lied about the abuse. Two days later, S.J.G. met with the officer and repeated that she originally lied because she was angry with R.C. for fighting with her mother. She also stated that R.C. promised to move the family to a better house and that he "apologized and that's good enough for me." In the course of her meeting with the officer, S.J.G. switched back to her original account. Mother disputed the genuineness of S.J.G.'s reinstatement of her account of abuse, claiming that the officer asked leading questions and threatened S.J.G. with criminal penalties if she recanted. Mother admitted that she urged S.J.G. to recant her statement so the family could "get the blithers out of Warroad."

[1] In this opinion, this 2008 encounter is referred to as "the midnight incident."

Shortly after S.J.G. met with the Warroad police officer, the family moved to Grand Rapids. On February 12, 2008, Itasca County filed a CHIPS petition and placed S.J.G. in foster care. The county claimed that S.J.G was a CHIPS due to R.C.'s sexual abuse and mother's failure to protect her. Mother denied that S.J.G. was sexually abused.

At trial in March 2009, S.J.G. testified to the abuse. She described the incident in Texas, the touching that took place in her brother's bedroom, and the midnight incident. There were minor inconsistencies between her trial testimony and previous statements. S.J.G. exhibited great difficulty in describing the events and needed a break to compose herself before stating that R.C. had touched her vagina. She spoke with a monotone voice and flat composure; she appeared distracted and reluctant to answer several questions. She also expressed concern that she was disappointing her mother.

Mother also testified. In response to the question of whether she believed her daughter, mother stated "damned if I do, damned if I don't. I don't know how to respond." Mother said that she believed that S.J.G. made up her allegations out of anger against R.C. Mother testified that S.J.G. resented R.C. for denying S.J.G. computer privileges and for pushing her (mother) five months earlier. Friends of mother and R.C. and S.J.G.'s brother testified that they did not observe indications of inappropriate contacts between R.C. and S.J.G.

The district court found S.J.G.'s testimony credible, concluded that Itasca County proved by clear and convincing evidence that S.J.G. was sexually abused, and concluded that S.J.G. was a CHIPS pursuant to Minn. Stat. § 260C.007, subd. 6(2) (2008). The district court also deemed S.J.G. a CHIPS due to mother's state of immaturity pursuant to

Minn. Stat. § 260C.007, subd. 6(8) (2008). That ruling was based on a finding that mother "lacks insight into sexual-abuse dynamics and is unable to recognize the risk to her child when she is exposed to a perpetrator of domestic abuse." This appeal followed.

D E C I S I O N

I.

The basic issue on appeal is whether the district court clearly erred in finding that S.J.G. was a victim of sexual abuse. A successful CHIPS petition requires proof of both an enumerated condition for child protection or services and a resulting need for protection or services. Minn. Stat § 260C.007 (2008); *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 728 (Minn. App. 2009). Findings in a CHIPS proceeding require proof by clear and convincing evidence. *In re Welfare of B.A.B.*, 572 N.W.2d 776, 778 (Minn. App. 1998). A reviewing court should only reverse a CHIPS determination if it is clearly erroneous or unsupported by substantial evidence. *Id*. Clear error occurs when "review of the entire record leaves the court with the definite and firm conviction that a mistake has been made." *Id*. (quotation omitted).

A CHIPS petition may be granted on the finding that the child "resides with or would reside with a perpetrator of domestic child abuse." Minn. Stat. § 260C.007, subd. (6)(2)(iii). "Child abuse" includes acts against minors that constitute a violation of, inter alia, Minn. Stat. §§ 609.342 and .343 (2008) (first and second degree criminal sexual conduct). Minn. Stat. § 260C.007(5). Such abuse can satisfy the requirements for a CHIPS petition. *See In re Welfare of M.E.W.*, 400 N.W.2d 375, 377 (Minn. App. 1987) (finding abuse under precursor statute, Minn. Stat. § 260.015 (1984 & Supp.1985)).

In contesting the district court's finding of sexual abuse, mother claims that S.J.G's testimony is vague, inconsistent, motivated by malice towards R.C., and unreliable due to S.J.G.'s mental and emotional deficiencies. Mother also emphasizes that S.J.G. recanted her story and then reasserted her original allegations.

The record contains extensive accounts by S.J.G. of abuse. In her statement to the social worker and her testimony, S.J.G. described details of the incident in Texas, the continuing abuse once the family moved, and the midnight incident in like sequence and wording. In both accounts, the first incident of abuse occurs in Texas, next there are contacts in her brother's room, and finally there is the midnight incident.[2] S.J.G. did not state the number of times she was abused, she only provided an estimate.

Mother attacks S.J.G.'s statements as being the product of improper questioning. We agree with mother that multiple interviews with a juvenile witness pose a greater risk of undue influence and that several people interviewed S.J.G. in a short time period. However, the district court had a sufficient basis to conclude that the form of questions did not render S.J.G.'s account incredible. Although not conducted in strict conformity with the First Witness Protocol,[3] the district court did not abuse its discretion in ruling that the county social worker's interview was not inappropriately leading. The social

[2] Mother asserts that S.J.G. testified that she was abused in her bedroom when her previous account took place in the bathroom. However, the alleged inconsistency is based on mother's version of the child's previous statement to her. Mother also claims that, in regard to the midnight incident, S.J.G. testified that she was touched in "no other place" and then added that R.C. touched her vagina. The record shows, however, that S.J.G. hesitated but never contradicted herself in this way on the witness stand.

[3] First Witness Protocol is used to interview sexual-assault victims. The protocol discourages leading questions and multiple interviews.

worker used open-ended questions at the outset of the interview, moved from general to specific inquiries, and incorporated previous answers to narrow the focus of the inquiry. We also note that S.J.G. is 15, not a young child who would be as highly vulnerable to suggestion and other influences of interviewers.

Mother's claims that S.J.G. is biased against R.C. is offset by S.J.G.'s attachment to mother. S.J.G. was reluctant to discuss details of abuse and to disappoint her mother by affirming her allegations. S.J.G. expressed a clear desire to live with mother rather than foster parents. S.J.G. did express anger against R.C. when denied computer privileges, but the force of this bias appears no greater than any teenager would have for a parent asserting limits. There is no indication that the district court ignored the possible problem of bias.

With respect to S.J.G.'s recanting, the district court observed that there was credible evidence that S.J.G. was pressured to make the telephone statement to the police officer recanting her original account. Mother placed the phone call and then put S.J.G. on the line. In the course of recanting, S.J.G. stated that R.C. was going to get the family a "new house," and that R.C. apologized for the alleged actions.

Mother also objects to the interview with the police officer in which S.J.G. first recanted and then repeated her accusations. We agree that the officer used leading questions before S.J.G. returned to her original account. The district court considered the nature of this questioning, but as previously observed, it also considered the influence of R.C.'s apology and economic support, concluded that S.J.G was coached to say she lied, and discounted any impact the officer's questions and statements may have had. We

conclude the district court had an adequate basis for determining that the recantation was not credible.

Mother also argues that unidentified mental-health issues undermine S.J.G.'s credibility. Some witnesses testified that S.J.G. showed symptoms of unidentified mental-health issues. Interviewers noted erratic crying and giggling, low self-esteem, and inappropriate behavior for her age. Mother, however, fails to connect S.J.G.'s ambiguous mental-health problems with an inclination to lie. The district court noted that S.J.G.'s demeanor was flat but "consistent with [that] of a child discussing a difficult subject." The district court also relied on testimony by the social worker and the school counselor that S.J.G. comprehended what she was saying. The psychologist also observed that the abuse could have even caused S.J.G.'s erratic behavior.

Overall, the district court found S.J.G.'s mannerisms consistent each time she discussed the abuse. As a credibility determination, such a finding deserves significant deference. *In the Matter of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990) ("Trial courts stand in a superior position to appellate courts in assessing the credibility of witnesses, and our cases echo this refrain."). Without a more substantial record establishing mental instability or other evidence linking her emotional problems to dishonesty, we conclude that it was not clear error for the district court to credit S.J.G.'s testimony.

Mother also claims that the finding of abuse is not proper because there is no evidence corroborating S.J.G.'s claims. Although there were no witnesses to the abuse, sexual abuse is rarely witnessed by a third person and corroboration is not required so long as there is clear and convincing evidence of the abuse. *See In re Welfare of V.R.*,

355 N.W.2d 426, 430-31 (Minn. App. 1984) (finding sexual abuse occurred based on consistent testimony of the victim). Mother cites a criminal case for the proposition that eyewitnesses are necessary. However, that is not an accurate statement of Minnesota criminal law. *Id*. Regardless, this is a juvenile-protection/CHIPS proceeding; the proof-beyond-a-reasonable-doubt standard is not applicable. In sum, we conclude that, individually and cumulatively, mother's various challenges to S.J.G.'s account of sexual abuse do not create a basis for our reversal of the district court's determination that S.J.G.'s account was credible and that there was clear and convincing evidence of abuse. We conclude that the district court did not clearly err or abuse its discretion.

II.

The second issue appellant raises is whether in this CHIPS proceeding the state had the burden of establishing that appellant had knowledge of the abuse. Here, the district court found that S.J.G. needed protection or services because she lacked proper parental care due to "the . . . state of immaturity of the child's parent . . . ." Minn. Stat. § 260C.007, subd. 6(8). Several scenarios could demonstrate inappropriate parenting under this statutory provision, including a parent's improper inaction in the face of abuse.[4] *See In re Welfare of S.A.V.*, 392 N.W.2d 260, 263 (Minn. App. 1986) ("[K]nowledge of abuse by another without taking corrective action is clear evidence of emotional disability or immaturity of the parent."). Accordingly, the district court found

[4] Designation of a 45-year-old as "immature" may be unusual. We do not consider the question of whether the immaturity provision applies to the facts in this case because the parties do not raise and the district court did not address the matter.

that mother "lacks insight into sexual-abuse dynamics and is unable to recognize the risk to her child when she is exposed to a perpetrator of domestic child abuse."

Mother claims she did not have the requisite knowledge of abuse for a CHIPS determination because she justifiably discounted her daughter's report of sexual abuse by R.C.[5] In her skeptical reaction to S.J.G.'s complaint, mother decided to take the risk that S.J.G. was being abused by R.C. Mother did not report possible abuse or seek a professional evaluation of S.J.G.'s account, she did not question R.C., and she continued to reside with R.C. Mother claims she took steps to assure that S.J.G. would not be alone with R.C. However, mother did not and could not prevent R.C. from being alone with S.J.G. R.C. could enter S.J.G.'s room at night while mother slept. Realistically, mother is unable to prevent abuse so long as R.C. lives in the home. She effectively has chosen her affection for R.C. and his economic support over the best interests of S.J.G. These

[5] The parties and the district court cite the supreme court's recent decision in *In re Welfare of the Child of T.P.*, 747 N.W.2d 356 (Minn. 2008), as requiring that the nonabusive parent have actual or constructive knowledge of the abuse for a CHIPS determination under Minn. Stat. § 260C.007, subd. 6(8). This reliance on the *T.P.* decision is misplaced. *T.P.* required such a finding in interpreting the "egregious harm" provision in the termination-of-parental-rights (TPR) statute. 747 N.W.2d at 360-62; *see* Minn. Stat. § 260C.301, subd. 1(b)(6) (2008).

This appeal is a CHIPS, not a TPR proceeding. The language regarding parental "maturity" in the CHIPS statute is different from the TPR statute's "egregious harm" provision. *Compare* Minn. Stat. § 260C.007, subd 6(8) *with* Minn. Stat. § 260C.301 subd. 1(b)(6).

Although the ruling in the *T.P.* case does not control the issue before us, S.J.G. told mother of the abuse and mother took no steps to have S.J.G.'s report evaluated or to effectively prevent future abuse. This raises a question of whether mother acted responsibly or maturely. *See S.A.V.*, 392 N.W.2d at 263.

facts adequately support the district court's finding that mother knew of and did not appreciate the risk posed by R.C.

Affirmed.

Dated: