STATE OF MINNESOTA
IN COURT OF APPEALS
A10-118

In the Matter of the Welfare of the Children of: K. L., Parent.

Filed June 29, 2010
Affirmed and remanded in part
Stauber, Judge

Hennepin County District Court
File No. 27JV0911283

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Considered and decided by Peterson, Presiding Judge; Stauber, Judge; and Collins, Judge.*

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

STAUBER, Judge

On appeal from a CHIPS adjudication, appellant-mother argues that (1) there is insufficient evidence to support the district court's conclusion that the children are in need of protection or services and (2) the district court failed to adequately address the children's

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

best interests. Because there is clear and convincing evidence in the record that the minor children are in need of protection or services, we affirm the CHIPS adjudication. But because the district court's findings do not sufficiently address the children's best interests under Minn. Stat. § 260C.201, subd. 2 (2008), we remand for the necessary findings.

FACTS

Appellant K.L. lives in Brooklyn Park with her five children, J.S., born June 16, 1997, R.S., Jr., born February 13, 1999, A.C., born November 12, 2002, V.C., Jr., born August 16, 2004, and C.S., born July 9, 2007. Appellant is presently in a "committed relationship" with L.S., who is the presumed father of appellant's youngest child, C.S. L.S, who is not the father of appellant's other four children, lives in Blaine with his mother, Cynthia Conner.

On April 20, 2009, the Blaine Police Department (BPD) executed a search warrant at L.S.'s home. The search warrant was based on complaints from neighbors regarding short-term traffic at L.S.'s home. Neighbors complained of seeing people come out of L.S.'s home to meet vehicles in the street and make exchanges. The BPD put the home under surveillance and stopped two vehicles. In one vehicle, police found crack cocaine, and in the other they found heroin.

At the time the warrant was executed, appellant and four of her children were present at the home. Also present were L.S. and about ten other people. During the execution of the warrant, police found crack cocaine in L.S.'s pants' pocket and heroine in the pants' pocket of anther adult male, Gregory Haynes. Both L.S. and Haynes were

arrested. Appellant, however, was not arrested, and none of her children located at the home were removed by police.

Based on a tip from a jail informant of renewed drug activity at L.S.'s residence, a second search warrant was executed at L.S.'s home on October 1, 2009. Present during the search were appellant, V.C., Jr., Haynes, and Conner. Police found V.C., Jr., asleep on a small dirty mattress in a basement bedroom that "reeked of urine." In a bedroom across the hall from where V.C., Jr. had been sleeping, police found cocaine on top of a nightstand. Police also found an uncapped hypodermic needle filled with suspected heroin in a bathroom cabinet. The bathroom was located next to the bedroom in which V.C., Jr. had been sleeping. The cabinet did not have any doors and was positioned above a sink. In addition, police discovered approximately one pound of marijuana and ecstasy pills in unspecified locations. Appellant, Conner, and Haynes were subsequently arrested, and V.C., Jr. was placed with child protection.

On October 6, 2009, respondent Hennepin County Human Services and Public Health Department filed a petition alleging that appellant's five children were in need of protection or services (CHIPS). The CHIPS petition was based on three statutory grounds: Minn. Stat. § 260C.007, subd. 6(3), (8), (9) (2008).

Child protection investigator Naomi Stock was assigned to appellant's case and testified that she interviewed appellant and her children after the execution of the October 1, 2009 search warrant. According to Stock, appellant refused to acknowledge that drugs were found in L.S.'s home, or that V.C., Jr. was endangered in any manner by being present in the home. Stock also testified that the children were "guarded" during the

interviews and that appellant's 12-year-old-child stated that he "pleads the Fifth." Although Stock admitted that the children appeared to be "clean" and in "healthy condition," she was concerned for their well-being given the history of drugs in L.S.'s home.

Appellant testified that she is at L.S.'s house providing childcare for L.S.'s other children "most of the time, for the week - - for the weekdays, and then kids will come with me on the weekends." Appellant also acknowledged that she was at the house when the search warrants were executed and testified that she went to L.S.'s house on the morning of October 1, 2009, in order to lend Conner her car so that Conner could run an errand. Appellant claimed that she did not believe that drugs were found in L.S.'s home, and explained that she believed that BPD's motive was to get L.S. out of the city. Appellant further claimed that she would continue to visit L.S. at his home unless restricted by respondent. But appellant conceded that if she believed L.S. was involved with drugs, she would not allow her children to be around him.

The district court found that the children appeared clean and healthy, that they live in a different house than the one with the drugs, and that there was no evidence concerning their education or mental health. The court concluded that the allegation under Minn. Stat. § 260.007, subd. 6(3), was not proven by clear and convincing evidence, but held that appellant "showed immaturity when she refused to believe or acknowledge that she is exposing her children to a home where illegal drugs are being used and/or sold." The court also concluded that the children are exposed to a dangerous environment because the "children are exposed to the use and/or sale of illegal drugs in

the home of [L.S.]." The district court adjudicated all five of appellant's children CHIPS pursuant to Minn. Stat. § 260C.007, subd. 6(8), (9). This appeal followed.

D E C I S I O N

I.

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).

The district court may find a child to be in need of protection or services based on several enumerated statutory grounds. *See* Minn. Stat. § 260C.007, subd. 6 (2008). A successful CHIPS petition requires proof of both an enumerated condition for child protection or services and a resulting need for protection or services. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 728 (Minn. App. 2009).

Appellant argues that there is insufficient evidence in the record to support the district court's conclusion that based on Minn. Stat. § 260.007, subd. 6(8), (9), appellant's children are in need of protection or services. Appellant also contends that because the district court's order contains no evidence related to the two older children, these two older children cannot be adjudicated CHIPS.

A. State of immaturity

Minn. Stat. § 260C.007, subd. 6(8), provides that a child is in need of protection or services if 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[.]"

Appellant argues that there is insufficient evidence to support the district court's conclusion that appellant's state of immaturity is such that it leaves her children without proper parental care. To support her claim, appellant relies upon *S.S.W.* In that case, the mother's parental rights to her four children were terminated following findings that (1) the mother engaged in inappropriate sexual conduct with her children; (2) the children had been exposed to long-term neglect, including their dental and physical health, inappropriate exposure to sexual behavior, homelessness, and unsafe caretakers; and (3) the mother was in need of a thorough psychological examination. *S.S.W.*, 767 N.W.2d at 725. The mother later had a fifth child, and the government filed a CHIPS petition alleging that the child was in need of protection or services. *Id.* The district court found "[t]he fear that [the mother's] history of child abuse might be repeated is not sufficient to meet [the government's] legal burden." *Id.* at 734. Thus, the district court dismissed the petition because despite the mother's history of mental-health issues, there was nothing to suggest that the mother was not providing for the child's needs. *Id.* at 726. On appeal, this court held that there was sufficient evidence to support the district court's findings that the mother was presently providing for the child's needs and that the child was not in need of protection or services. *Id.* at 735.

Appellant argues that this case is similar to *S.S.W.* because despite some evidence of risky behavior, the district court found that appellant's children were clean and healthy. But this case is distinguishable from *S.S.W.* because in *S.S.W.*, the mother's behavior that resulted in the termination of her parental rights to her other children occurred in the past, and there was no evidence that the mother was not presently providing for her child's needs. *S.S.W.*, 767 N.W.2d at 726. Here, the record reflects that appellant was present at L.S.'s house when two search warrants were executed, and at least one of appellant's children was present during the execution of both the warrants. The record also reflects that during the execution of the warrants, the officers found drugs in the house. Moreover, appellant testified that she frequented L.S.'s house on most weekdays and stated that she would continue to see L.S. at his house unless restricted by respondent. Therefore, unlike *S.S.W.* where the behavior at issue happened in the past, the record reflects that appellant continues to engage in the behavior at issue.

Appellant further argues that there is no *need* for protection or services because the district court found that the children are clean and healthy, and the record supports this finding. *See S.S.W.*, 767 N.W.2d at 728 (stating that a successful CHIPS petition requires proof of both an enumerated condition for child protection or services *and* a resulting *need* for protection or services). But the record supports the district court's finding that appellant is immature and that the children need protection or services as a result of appellant's immaturity. Appellant's immaturity is reflected by her refusal to acknowledge that drugs were present in L.S.'s house, despite the overwhelming evidence to the contrary. Appellant's immaturity is also reflected by the fact that although she

claimed that she has never used any drugs such as "cocaine or heroin," a urine analysis taken from appellant after the case was opened tested positive for opiates. Moreover, the children are in need of protection or services because appellant admitted that she would continue to see L.S. at his house unless restricted by respondent. And despite appellant's claim that the "whole case came down to visits of unspecified frequency and duration to L.S.'s home," the record reflects that appellant is in a "committed relationship" with L.S. and that while at L.S.'s house she provides childcare for L.S.'s other children "most of the time, for the week - - for the weekdays, and then kids will come with me on the weekends." Thus, there is substantial evidence to support the district court's conclusion that the children are in need of protection or services under Minn. Stat. § 260C.007, subd. 6(8).

B. Dangerous environment

Minn. Stat. § 260C.007, subd. 6(9), provides that a child is in need of protection or services if the child "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."

Appellant argues that because she lives in Brooklyn Park, and the alleged drug activity occurred at L.S.'s home in Blaine, there is insufficient evidence to support the district court's conclusion that the children are in need of protection or services under Minn. Stat. § 260.C.007, subd. 6(9). But, under the statute, the dangerous environment "is not limited to," exposure to criminal activity in the "home." *See id.* Here, the record

reflects that appellant's children were exposed to drug activity, which constitutes criminal activity. Although the drug activity was not in the children's home, it occurred at L.S.'s house, a place where appellant and her children frequented on most weekdays. Because the children frequented L.S.'s house often, the house was part of the children's environment, much like a school or a daycare center would be part of a child's environment. The frequent exposure to the drug activity placed the children in a dangerous environment. Moreover, the record reflects that during the execution of the October 1, 2009 search warrant, police officers found drugs, including an uncapped hypodermic needle, in areas easily accessible to young children. The accessibility of the drugs further exacerbates the dangerousness of the environment. Accordingly, there is substantial evidence to support the district court's conclusion that the children are in need of protection or services under Minn. Stat. § 260C.007, subd. 6(9).

C. Evidence related to the two oldest children

Appellant argues that because the district court's order contains no evidence related to the two older children, these two children cannot be adjudicated CHIPS. We disagree. The record reflects that appellant was usually at L.S.'s house during the week. Appellant also indicated that her children were often with her at L.S.'s house. Moreover, in light of the fact that appellant's oldest child is only 12-years-old, even the older children would presumably be with appellant when she is at L.S.'s house. Consequently, there is also sufficient evidence to support the CHIPS adjudication for the two older children.

II.

"The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2 (2008). An order adjudicating a child CHIPS "shall contain written findings of fact to support the disposition and case plan ordered and shall also set forth in writing . . . [w]hy the best interests and safety of the child are served by the disposition and case plan ordered." Minn. Stat. § 260C.201, subd. 2(a)(1) (2008).

Appellant argues that the district court's order fails to adequately address the children's best interests. We agree. The December 24, 2009 order was both the adjudication order and the dispositional order. Not only did the district court fail to make written findings explaining why the best interests of the children are served by the disposition, but nowhere in the district court's order is the term "best interests" used. Therefore, because the district court's findings do not sufficiently address the statutory criteria set forth in Minn. Stat. § 260C.201, subd. 2, we remand for the necessary findings.

Affirmed in part and remanded.