STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1334
A11-1335

In the Matter of the Welfare of the Child of:
S. N., Parent.

Filed January 17, 2012
Affirmed
Halbrooks, Judge

Blue Earth County District Court
File No. 07-JV-11-175

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Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

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

HALBROOKS, Judge

In this consolidated appeal, mother and father challenge the termination of their parental rights to their child, S.S.R.H. We affirm.

FACTS

S.N. and A.G. had a baby, S.S.R.H., on January 17, 2011. S.N.'s rights to parent D.H., a child she had in 2005, were involuntarily terminated in March 2010.[1] Because of the prior involuntary termination, S.N. and A.G. arranged for S.S.R.H. to live with A.G.'s mother, H.A., so that they would not have to defend a termination of parental rights (TPR) petition based on the presumption of S.N.'s palpable unfitness. The permanent custodial transfer of S.S.R.H. to H.A. was initiated, but never finalized.

S.N. and A.G. have had a volatile relationship. A.G. abuses alcohol and suffers from post-traumatic-stress disorder. The alcohol abuse led to violence on June 19, 2010, when police arrested A.G. for domestic assault by strangulation and violation of a domestic abuse no-contact order for attacking S.N., who was two months pregnant, and who had red marks on her neck, a cut on her left cheek, and a bloody lip. On February 11, 2011, A.G. again assaulted S.N. Her injuries included a black eye, a severely cut lip, fractures of her nose and facial bones, and a dislodged tooth.

Three days later, S.N. went to H.A.'s home looking for A.G. H.A. felt threatened by S.N. and called the police, but no charges were filed. Following that incident, H.A. indicated that she wanted S.S.R.H. to be removed from her home. On February 15, 2011, the county initiated TPR proceedings against S.N. and A.G., and a trial was held on May 23, 2011.

The district court concluded that S.N. failed to overcome the presumption of palpable unfitness and that it is not in S.S.R.H.'s best interests to continue the parent-

[1] A.G. is not the father of D.H.

child relationship between S.N. and S.S.R.H. The district court also terminated A.G.'s parental rights based on palpable unfitness and concluded that termination of his parental rights is in the best interests of S.S.R.H. This appeal follows.

D E C I S I O N

Parental rights may be terminated only for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). Courts presume that a natural parent is a fit and suitable person to be entrusted with the care of the parent's child and that it is usually in the best interests of the child to be in the custody of a natural parent. *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980). But a district court may terminate the parental rights to a child if one of nine statutory bases exists and termination is in the child's best interests. *See* Minn. Stat. § 260C.301, subds. 1, 7 (2010). The petitioning party bears the burden of proving the statutory basis by clear and convincing evidence. Minn. Stat. § 260C.317, subd. 1 (2010); Minn. R. Juv. Prot. P. 39.04, subd. 2(a). The district court's decision to terminate parental rights will be affirmed "if at least one statutory ground alleged in the petition is supported by clear and convincing evidence and termination of parental rights is in the child's best interests." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008).

I.

S.N. contends that the district court's conclusion that she failed to overcome the presumption that she is palpably unfit to be a parent is contrary to the record. Minn. Stat. § 260C.301, subd. 1(b)(4), provides: "It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent's parental

rights to one or more other children were involuntarily terminated . . . ." If the presumption applies, the parent has the burden to establish the existence of conditions showing fitness to parent the child. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003). In doing so, "a parent must affirmatively and actively demonstrate her or his ability to successfully parent a child." *Id*. at 251. "To shoulder this burden, the parent . . . is inevitably required to marshal any available community resources to develop a plan and *accomplish results that demonstrate the parent's fitness*." *In re Welfare of D.L.D.*, 771 N.W.2d 538, 544 (Minn. App. 2009) (quoting *D.L.R.D.*, 656 N.W.2d at 251).

A district court's determination of whether a parent has rebutted a presumption of palpable unfitness created by Minn. Stat. § 260C.301, subd. 1(b)(4), is a finding of fact that, on appeal, is reviewed for whether it is supported by substantial evidence and is not clearly erroneous. *See id.* (stating, "[y]et the district court concluded [that the parents] failed to rebut the statutory presumption of palpable unfitness").

S.N.'s parental rights to her first child, D.H., were terminated because of domestic violence and alcohol abuse involving A.G. Evidence in the record showed that those issues continued. In November 2009, S.N. entered A.G.'s home without permission and slapped him while holding a knife. In December 2009, S.N. refused to leave A.G.'s residence and struck him in the head with a closed fist. During both incidents, S.N. was intoxicated.

A parenting assessment conducted just before S.N.'s TPR trial concerning D.H. concluded that S.N. suffered from mental-health issues and that she failed to follow

through with services that were provided for her. The report concluded that S.N. "needed to provide a safe, secure, nurturing environment . . . . [S.N.] has not been able to provide that environment in the past, and her ability to do so in the future is questionable."

S.N. has worked to address her anger and alcohol problems. Holly Holland, a supportive-housing worker, testified that S.N. has made some progress and changes in her life and is no longer as volatile as she has been. Holland further testified that S.N. could possibly parent her child in the reasonably foreseeable future after completing a case plan.

S.N. began counseling sessions with Amanda Knutson in July 2010. Knutson testified that S.N. had frequent angry outbursts during their early sessions, but that the outbursts have subsided and that S.N. has made progress, particularly in the two to three months that preceded the TPR trial concerning S.S.R.H. S.N. testified that she has taken parenting classes, attended Alcoholics Anonymous meetings, is sober, maintains a residence, and has obtained a job. While Knutson did not recommend that S.N. begin independent parenting immediately, she expressed her opinion that S.N. may be able to parent in the foreseeable future. In doing so, Knutson acknowledged that she has never observed S.N. with S.S.R.H.

S.N. has not followed all of Knutson's recommendations. Knutson counseled S.N. to end her relationship with A.G., but she has not done so. S.N. has continued to see him as a "friend," even though she knows that the relationship is "negative." A.G. transported S.N. to appointments with Knutson, and A.G. indicated that he occasionally stays at S.N.'s residence. A.G. also listed S.N.'s residence as his address in court documents.

Theodore Surdy, Ph.D., L.P., conducted a neuropsychological assessment of S.N. in April and May 2011. Dr. Surdy identified issues of paranoid ideation, interpersonal aggression, and antisocial traits. He diagnosed S.N. with intermittent explosive disorder and paranoid personality disorder with anti-social features. Dr. Surdy recommended continued psychological services for S.N. to "address her behavioral and emotional dyscontrol issues, attachment issues, aggression, personality issues, and assist with child care and management skills if her children [were] ever returned to her." He also recommended parenting classes and stated that "[h]er alcohol consumption needs to be addressed as this has been a concern with some of her episodes of behavioral and emotional dyscontrol."

The district court, after carefully weighing the evidence, made the following findings in its order:

> Although [S.N.] has made changes in some areas of her life, it is clear that she has not been able to keep herself safe, much less provide a "safe, secure, nurturing environment" for a child.
>
> [S.N.]'s ongoing relationship with [A.G.] is a very strong indication that she has no adequate support group, that she disregards the recommendations of her counselor, and that she has no demonstrated ability to keep herself or a child safe.
>
> [S.N.] has not overcome the presumption of unfitness as she has not demonstrated that her parenting abilities have improved, or shown any present ability to parent her child. Her mental health concerns are ongoing. Although she has had some improvement in her behavior, she remains prone to provocative and aggressive outbursts. Her ability to be self-sufficient, stable and safe, has not changed sufficiently in the

> little time that has elapsed since the previous termination of parental rights proceeding.

We note that S.N.'s participation in therapy and services is commendable, but engagement in services is not sufficient to overcome the presumption of palpable unfitness. *D.L.R.D.*, 656 N.W.2d at 250. Actual, demonstrable parental fitness is required. *In re Welfare of J.W.*, ___ N.W.2d ___, 2011 WL 5903404, at *5 (Minn. App. Nov. 28, 2011), *review denied* (Minn. Jan. 6, 2012).

The district court concluded:

> In the previous termination case, [S.N.] showed a pattern of improvement until the child was returned to her care, and then the stress of caring for the child would result in a rapid decline in her mental/emotional well-being, resulting in behavior that would precipitate the removal of the child. Although [S.N.] currently demonstrates some improved behavior, the presumption of unfitness remains.

Because the district court's findings have substantial support in the record and are not clearly erroneous, the district court did not err in concluding that S.N. failed to overcome the presumption of palpable unfitness.

II.

A.G. contends that the district court erred in its determination that he is palpably unfit to parent S.S.R.H. The district court can terminate an individual's rights if the individual

> 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).

The county met with A.G. on March 2, 2011, to provide him with a case plan to reunite him with S.S.R.H. The plan required him to follow the recommendations of a chemical-dependency assessment, which included: attending outpatient treatment, successfully completing anger-management classes, continuing individual therapy, managing his medication and following all psychiatric recommendations, attending a minimum of two self-help groups weekly, complying with probationary conditions, and abstaining from all non-prescribed mood-altering substances. The case plan also included obtaining employment, establishing stable housing, and completing a parenting assessment.

A.G. failed to comply with his case plan. In its order, the district court found that A.G.

> has not completed outpatient treatment. He has not completed anger management classes. He has not attended self-help groups. He has not abstained from alcohol and he has not complied with probationary conditions. His arrests and returns to jail on March 25 and May 4 were related to his use/abuse of alcohol. He has not obtained employment, and his housing situation is not stable. He has not completed a parenting assessment. Although [A.G.] has had little time when he has not been incarcerated since the birth of the child, he has not shown that he either desires or has the ability to complete the case plan.

The district court further noted that A.G. has a long criminal record that includes convictions for assault, kidnapping, receiving stolen property, fifth-degree controlled

substance, DWI, and probation violations. A.G. was in jail when S.S.R.H. was born on January 17, 2011. Five days after his release on February 6, 2011, A.G. seriously assaulted S.N. A.G. was arrested on a probation violation on March 25, 2011, released on April 12, 2011, and then arrested again on May 4, 2011.

Concluding that A.G. is palpably unfit to parent S.S.R.H., the district court stated that A.G.'s "behavior of alcohol abuse and criminal activity has been prolonged, consistent, and renders him unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental and emotional needs of his child." The district court also found that A.G. "has a demonstrated propensity to violence, including a . . . serious assault upon the mother of the child [from February 11, 2011], that precludes this court from believing the child would be safe in his care."

Because there is substantial evidence in the record to establish by clear and convincing evidence that A.G. is palpably unfit to parent S.S.R.H. based on his alcohol abuse, criminal activity, and violence that directly relates to his relationship with S.S.R.H., the district court did not err in its conclusion.

III.

S.N. and A.G. contend that the district court erred by concluding that it is in S.S.R.H.'s best interests to terminate their parental rights. If the district court finds the presence of at least one statutory basis to terminate parental rights, "the best interests of the child must be the paramount consideration" in deciding whether to terminate parental rights. Minn. Stat. § 260C.301, subd. 7. If there is a conflict between the interests of a parent and a child, "the interests of the child are paramount." *Id.*

In analyzing a child's best interests, "the court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3) (requiring the same three factors). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *R.T.B.*, 492 N.W.2d at 4. The district court's best-interests analysis must contain findings adequate to facilitate effective appellate review, to provide insight into which facts or opinions were most persuasive of the ultimate decision, and to show the district court's consideration of the relevant statutory factors. *See In re Welfare of M.M.*, 452 N.W.2d 236, 239 (Minn. 1990) (requiring adequate explanatory findings regarding best interests); *see also* Minn. R. Juv. Prot. P. 42.08, subd. 1(b) (requiring that an order granting involuntary termination of parental rights contain "findings regarding how the order is in the best interests of the child"). But generally, the district court's determination of a child's best interests is not susceptible to appellate review because it involves factual findings based on credibility determinations. *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003).

The district court made best-interests determinations for S.S.R.H. in regard to both S.N. and A.G. Specifically for S.N., the district court stated, "Although there was some testimony that provided some hope for [S.N.] to be able to parent in the foreseeable future, the delay necessary to determine whether . . . she could successfully complete a case plan and demonstrate an ability to parent is not in the child's best interest." Regarding A.G., the district court found that while "there was some testimony that

perhaps additional services and time could help [A.G.] overcome his alcohol and anger issues, the delay necessary to determine whether he could successfully complete a case plan and demonstrate an ability to parent is not in the child's best interest." The district court concluded:

> Termination is in the best interest of [S.S.R.H.] because it gives the child the best chance for success in the future with a new family that can provide the type of stability, and safety, that the parents are unable to provide, or will be able to provide in the reasonably foreseeable future. The parents' interest in preserving the parent-child relationship is outweighed by the child's need for safety and security for the future.

Because the district court's finding that S.N. failed to overcome the statutory presumption of palpable unfitness is supported by substantial evidence and is not clearly erroneous, we conclude that the district court did not err. Because the district court's determination that A.G. is palpably unfit to parent S.S.R.H. is supported by clear and convincing evidence and because the district court properly considered the best interests of S.S.R.H. in its conclusion to terminate both parents' parental rights, we affirm.

Affirmed.