STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1758

In the Matter of the Welfare of the Child of: A. M. J. and L. W. J., Parents.

Filed April 10, 2017
Affirmed
Stauber, Judge

Brown County District Court
File No. 08-JV-16-21

Adam W. Klotz, Minneapolis, Minnesota (for appellant A.M.J.)

Charles W. Hanson, Brown County Attorney, Bailey Breck Rolfsrud, Assistant County Attorney, New Ulm, Minnesota (for respondent)

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Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and Stauber, Judge.

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

STAUBER, Judge

In this appeal from the termination of her parental rights, appellant A.M.J. argues that her due-process rights were violated when the district court relied on a prior termination of her parental rights that occurred in West Virginia to support a presumption of palpable unfitness in the current proceeding. A.M.J. also asserts that she successfully rebutted any presumption of palpable unfitness present in this case and that termination is not in her child's best interests. We affirm.

FACTS

Appellant A.M.J. and L.W.J. are the parents of E.J.,[1] born in 2015. Appellant's parental rights to two other children, ages three years and one year, were terminated in West Virginia in September 2015, after the three-year-old child suffered severe injuries at the hands of appellant's boyfriend at that time. Appellant moved to Minnesota, where she has family, in October 2015, and E.J. was born in Minnesota. Appellant returned to West Virginia to plead guilty to misdemeanor charges of child neglect and giving false information about a child's injury; she was sentenced to serve six months in jail on the first charge and one year on the second, but the sentences were suspended.

Probation supervision was transferred to Minnesota. Probation conditions prohibit appellant from having children in her residence or having unsupervised visitation until she is discharged from probation in 2019. Appellant complied with her probation conditions by having E.J. live with L.W.J., until the county learned of sexual-abuse allegations against him involving a child from another of his relationships.

The county filed a termination petition in February, 2016, alleging that appellant was palpably unfit to be a party to the parent-child relationship based on the presumption that arises when parental rights to another child are involuntarily terminated. The district court issued an emergency-protective-care order on February 24, 2016, after learning of sexual-abuse allegations against L.W.J. E.J. was placed with her maternal grandmother, B.K.

[1] L.W.J. voluntarily terminated his parental rights to E.J. on April 11, 2016, and is not a party to this appeal.

In between the petition filing and the trial, appellant engaged in personal therapy and attended a six-week session at Life Work Planning Center for Women on decision-making, goal-setting, assertive communication, boundaries, and self-esteem skills, as well as three additional sessions on job skills. She took part in a domestic-abuse support group until the group disbanded. Her therapist reported that she made progress in dealing with depression and feelings of helplessness, and in understanding and resolving "issues of domestic abuse in relationships."

Appellant had supervised visitation with E.J. at B.K.'s home in Mankato. B.K. testified that appellant visited the child between one and four times a week, depending on her work schedule and the weather. B.K. stated that appellant was able to care appropriately for E.J., and that the child was "responsive" to appellant. B.K. was willing to adopt E.J. but thought that appellant should have a chance to parent E.J.

Appellant had been living with her father in Comfrey, but she rented a duplex in Mankato two weeks before the termination trial. This unit was close to her mother's home. Appellant was working at Jackpot Junction, which is some distance from Mankato. She was seeking work closer to Mankato.

Appellant's probation agent testified that she was complying with her probation conditions, appeared to be stable and was "making progress." Appellant's probation, with its restrictions on unsupervised contact with children, would end in February 2019, with the possibility of being discharged up to 60 days earlier. The agent acknowledged that appellant was taking part in several support classes or groups, but none of those programs include parenting education.

Three county employees, a child-protection worker, an adoption social worker, and a social worker qualified as an expert, testified that adoption of the child by B.K. was the best plan because it minimized the number of times the child would be moved, the county had a preference for permanent placement, and "the most permanent option is adoption." Appellant would be unable to live with or care for the child alone because of her probation restrictions. The child-protection worker stated that the child was well-cared for by B.K. and that interactions between appellant and the child at a visit were normal. The social-work expert was concerned about the West Virginia case history and the relatively small amount of time that appellant spent with the child during supervised visits.

The guardian ad litem (GAL) also supported adoption as a permanent solution for E.J. The GAL was concerned about appellant's "judgment, her decision-making, and not that she would seek out someone abusive, but that . . . potentially, could happen to her yet again." There was a general acknowledgement that appellant would continue to be involved in the child's life after B.K., the maternal grandmother, adopted the child.

The district court's termination order reflected additional concerns. The court described the West Virginia charges and the three-year-old child's injuries in some detail. The court noted that the two fathers of appellant's older children were both abusive and L.W.J., E.J.'s father, was accused of sexual abuse with another child. The district court found that although appellant interacted well with the child, she had never cared for her in an unsupervised setting, and it was unclear how she would react in an emergency. The district court concluded that appellant was not a credible witness, citing her false

statements made to West Virginia police to protect her boyfriend, her concealment of her pregnancy during the West Virginia proceedings, and her changing stories about her relationship with L.W.J. Appellant testified that their relationship had ended in May or June 2016, then later testified that it ended in June or July 2016. Facebook postings showed contact in late July 2016. L.W.J. was at B.K.'s home with appellant and the baby on August 15, 2016, four months after he voluntarily terminated his parental rights. Both appellant and L.W.J. worked at Jackpot Junction.

The district court concluded that the presumption of palpable unfitness applied because of the West Virginia termination and that appellant had failed to rebut the presumption. The court further concluded that it was in E.J.'s best interests for appellant's rights to be terminated and for B.K. to adopt E.J. The district court denied appellant's motions for a new trial and/or amended findings. This appeal followed.

D E C I S I O N

A parent's rights to a child may be involuntarily terminated for any one of nine grounds set forth in Minn. Stat. § 260C.301, subd. 1(b) (2016). We review the district court's findings in a termination matter for clear error and its decision to terminate for an abuse of discretion. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008) (findings); *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014) (termination decision). An appellate court reviews the constitutionality of a statute as a question of law. *R.D.L.*, 853 N.W.2d at 131.

The district court terminated appellant's parental rights based on a conclusion that she was palpably unfit to be a party to the parent-child relationship because of specific

conditions directly relating to the relationship that rendered appellant unable to care for the child for the reasonably foreseeable future. Minn. Stat. § 260C.301, subd. 1(b)(4). The district court relied on the statutory presumption that a parent is presumed to be palpably unfit if the parent's parental rights to one or more other children have been involuntarily terminated. *Id.*

I.

Appellant argues that she was deprived of fundamental due-process rights by use of the statutory presumption of palpable unfitness based on a prior termination of parental rights. Appellant suggests that a West Virginia court may be more likely to involuntarily terminate rights because the state retains the burden as to a subsequent termination, whereas a Minnesota court may be more circumspect because of the "significant burden-shifting impact on said parent's subsequent child and parental rights." Appellant contends that this is "fundamentally unfair" because it "den[ies] the subject parent a meaningful adversarial hearing both retroactively as to the West Virginia termination and presently as to the Minnesota termination." The district court rejected this argument in a pre-trial hearing.

"The due process clause provides that the state may not deprive a person of life, liberty, or property without due process of law. The fundamental requirement of due process is the opportunity to be heard at a meaningful time in a meaningful manner." *In re Child of P.T.*, 657 N.W.2d 577, 586 (Minn. App. 2003) (quotations and citation omitted), *review denied* (Minn. Apr. 15, 2003). For procedural due process, a parent is guaranteed a "meaningful adversarial hearing." *See id.* at 587-88. This includes an

impartial decisionmaker, an attorney, the opportunity to testify, call witnesses, and refute evidence, and a requirement that the state demonstrate by clear and convincing evidence that a parent is palpably unfit. *Id.* at 587.

Appellant does not allege that she was denied a meaningful adversarial hearing in West Virginia, where she was represented by an attorney and had a trial. In Minnesota, appellant also had a trial, was represented by an attorney, and testified on her own behalf. Her attorney cross-examined witnesses and called witnesses who gave favorable testimony about appellant. Appellant was not denied her procedural due-process rights.

In *P.T.*, this court recognized that parents have a "substantive due process right to freedom from governmental interference in childrearing." *Id.* at 588. But this court concluded that the palpable-unfitness presumption was "narrowly tailored to meet a compelling state interest" and did not violate a parent's substantive due-process rights. *Id.* at 589. Appellant argues, however, that the differing burdens of proof between West Virginia and Minnesota law offend her substantive due-process rights.

In West Virginia, the state retains the burden of proving a finding of abuse or neglect by clear and convincing evidence. *In re C.M.*, 782 S.E.2d 763, 769 (W. Va. 2016). Even when invoking a presumption based on a previous termination, the burden remains on the state, although the presumption "lowers the threshold of evidence necessary for the termination of parental rights." *In re K.L.*, 759 S.E.2d 778, 783 (W. Va. 2014) (quotation omitted).

Under Minn. Stat. § 260C.301, subd. 1(b)(4), a parent is presumed to be palpably unfit "upon a showing that the parent's parental rights to one or more other children were

involuntarily terminated." This court interpreted that to mean that a parent has the burden of producing sufficient evidence to "allow a factfinder to find parental *fitness.*" *In re Welfare of the Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007) (emphasis in the original). The burden of persuasion, however, remains with the county. *Id.*

Appellant's argument is not grounded in fact: she speculates that West Virginia courts may be more likely to involuntarily terminate rights because it does not affect the burden of proof in a subsequent hearing, whereas Minnesota courts may refrain from doing so. Appellant provides no support for this position. Both states employ the palpable-unfitness presumption in subsequent terminations, and both states place the ultimate burden of persuasion on the state. Appellant has not met her burden of demonstrating that the statute is unconstitutional. *P.T.*, 657 N.W.2d at 583.

II.

Appellant argues that she has successfully rebutted the presumption of unfitness and, therefore, the district court erred by relying on the presumption to terminate her parental rights. The statutory presumption in Minn. Stat. § 260C.301, subd. 1(b)(4) is "easily rebuttable." *R.D.L.*, 853 N.W.2d at 137. A parent has the burden of producing "evidence that would justify a finding of fact that [the parent] is not palpably unfit" by demonstrating that the parent is "suitable to be entrusted with the care of the children." *Id.* (quotations omitted). The supreme court described this as a lesser standard than clear-and-convincing evidence. *Id.*

To rebut the presumption, a parent must show more than engagement in services; a parent must demonstrate his or her ability to successfully parent a child. *In re Welfare of*

Child of J.W., 807 N.W.2d 441, 446 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). In *J.W.*, the parent rebutted the presumption of unfitness by showing that she had "changed in significant and material ways." *Id.* at 446-47. She demonstrated "significant progress" in parenting skills through therapy and parenting classes; she was actively engaged in supervised visits with her children; she created a more stable living environment; she married a man with a full-time job; she had a car, and she created a greater support network. *Id.* at 446. She was actively supported by her instructors, foster parents, adoptive parents, and her relatives. *Id.*

In *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405 (Minn. App. 2011), *review denied* (Minn. July 28, 2011), the parent successfully rebutted the presumption by showing two years of sobriety, attendance at AA meetings, a commitment to avoid "unhealthy relationships that might adversely affect her sobriety or [the child's] safety," termination of her unhealthy relationships, active participation in services from the county, employment, stable living environment, therapy, supervised visitation, and compliance with probation. *J.L.L.*, 801 N.W.2d at 408, 412.

In contrast, the parents in *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538 (Minn. App. 2009), engaged in the same services they had used before the prior termination, and delayed in engaging in others. *D.L.D.*, 771 N.W.2d at 544. Both parents engaged in criminal activities after the birth of the subsequent child. *Id.* at 545. The court found that mother had mental-health issues that impacted her children and changed therapists to "present herself in a better light." *Id.*

Appellant falls somewhere in the middle of these cases. She participated in therapy and empowerment classes but did not attend parenting classes. She had supervised visitation with E.J., but it varied from one to four times per week. Until 2019, her probation conditions prohibit her from having unsupervised contact with E.J. She maintains that she severed her relationship with L.W.J., but evidence introduced at trial suggested that she was not honest about this. She continued to work at the casino where L.W.J. was a security guard. The district court's biggest concern was that appellant lied to protect her boyfriend after her older child was injured and was not honest about the status of her relationship with L.W.J. The first termination occurred because she did not protect the child; the district court found that "[a]lthough [appellant] has made progress in several areas of her life that were of concern, she has not rebutted the statutory presumption that she is palpably unfit to be a party to the parent and child relationship."

The court's reasoning is based on its view of appellant's credibility. This court defers to the district court's chance to observe witnesses and assess their credibility. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 94 (Minn. App. 2008). The district court found that "[appellant] was not candid regarding the extent of her contact with [L.W.J.]. This lack of candor is troubling in light of the basis for the prior termination, that is, her covering for a boyfriend who had severely abused [her son]." Thus, the district court was alarmed not only by appellant's failure to protect her son but also by her willingness to protect her abusive boyfriend. Appellant's changing stories about her relationship with L.W.J. suggested to the court that this was still an issue. The court concluded appellant failed to rebut the presumption that she was palpably unfit to parent the child. The

district court's findings are supported by record evidence. We conclude that the district court did not abuse its discretion by terminating appellant's parental rights on grounds of palpable unfitness.

III.

Appellant argues that there is not clear and convincing evidence to support the district court's conclusion that termination of her parental rights is in E.J.'s best interests. A district court must make findings and explain its rationale for its best-interests determination. *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). Findings must be supported by clear and convincing evidence. *Id*. at 625. We defer to the district court's credibility assessments, particularly in its best-interests analysis, because "[s]ome statutory criteria will weigh more in one case and less in another." *Id.* (quotation omitted). "Whether termination of parental rights is in a child's best interests is a decision that rests within the district court's discretion." *D.F.*, 752 N.W.2d at 95.

The best interests of the child are the paramount consideration in a termination matter. Minn. Stat. § 260C.301, subd. 7 (2016). The district court must consider the child's interest in preserving the parent-child relationship, the parent's interest in preserving the parent-child relationship, and any other competing interests factors. Minn. R. Juv. Prot. P. 39.05, subd. 3(3). "Competing interests include such things as a stable environment, health considerations, and the child's preferences." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012) (quotation omitted). When parental rights to another child have been terminated, the state has an interest in

protecting a child from parents who "have been adjudicated to pose a continuing threat to the safety of their children." *P.T.*, 657 N.W.2d at 588-89.

The district court's best-interest findings can be summarized as follows: (1) the court acknowledged that there is a bond between appellant and the child, but because the child would be adopted by appellant's mother, "[t]here will be an ongoing relationship between [appellant and E.J.] whether [appellant's] parental rights are terminated or not"; (2) the social worker, the adoption worker, the GAL, and the expert social worker all testified that adoption was preferable to transfer of physical and legal custody because permanency is better for the child; (3) the child is in a safe place and is well-cared for; (4) because of the terms of appellant's probation, the child may not reside with her; the child will have lived with B.K. for almost three years before appellant is discharged from probation; (5) the district court had concerns about whether appellant could "manage and raise a child on her own" and how she would handle a crisis or emergency; (6) the district court considered appellant not to be a credible witness; and (7) the district court was specifically concerned because appellant sought to protect her abusive former boyfriend and was dishonest about her relationship with E.J.'s father. Based on these findings, the district court briefly concluded that "[i]t is in the best interests of E.J. that the parental rights of [appellant] be terminated so that she can be adopted."

If the district court's findings are supported by clear and convincing evidence, this court must affirm even if it views the evidence differently. *See In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 387 (Minn. 2008) (admonishing this court to avoid "overstep[ping] the bounds of its role as a reviewing court" by making factual findings).

There is clear and convincing evidence to support the district court's findings regarding the child's best interests.

Affirmed.