STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1828

In the Matter of the Welfare of the Children of:
N.L., S.C., O.O., and S.M. (Deceased), Parents.

Filed March 13, 2017
Affirmed
Schellhas, Judge

Mower County District Court
File Nos. 50-JV-16-546, 50-JV-16-803,
50-JV-16-809, 50-JV-16-810, 50-JV-16-814

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Considered and decided by Kirk, Presiding Judge; Schellhas, Judge; and Bratvold, Judge.

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

SCHELLHAS, Judge

Appellant challenges the termination of her parental rights to four children, arguing that the district court's statutory bases for termination are not supported by clear and convincing evidence. We affirm.

FACTS

In March 2016, O.L., one of appellant-mother N.L.'s children, told his school principal that his mother beat him and his siblings and expressed fear that his mother would "kill [the children] and throw them in the garbage." The principal immediately relayed the child's allegations to the proper authorities, and later that day police interviewed three of mother's children, J.C., O.L., and C.L., at their school and subsequently removed all four children, including B.L., from mother's home on an emergency 72-hour hold.[1]

Mother denied that she abused the children and claimed that J.C. is a liar who negatively influences O.L. Mother also claimed that C.L. was the only "honest child" and that C.L. would tell the truth. But C.L. said that mother physically hit the children with wire hangers, lamps, wires, and shoes, and that mother would be lying if she denied that she hit the children.

Following an emergency child-in-need-of-protection-or-services (CHIPS) hearing on March 11, 2016, the district court determined that respondent Mower County Health and Human Services (MCHHS) had made a prima facie showing that the children were

[1]At the time of the police interviews, the children were ages, 11, 10, 7, and eight months.

CHIPS and that they were not safe living with mother. The court therefore ordered the children's out-of-home placement in foster care. In April 2016, MCHHS petitioned for a termination of parental rights (TPR) of mother to J.C., O.L., C.L., and B.L., alleging that: (1) mother had substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child relationship; (2) mother was palpably unfit to be a party to the parent and child relationship; and (3) the children had experienced egregious harm in mother's care. MCHHS attached to its TPR petitions an Iowa court order terminating mother's parental rights to another child, A.E.

At a TPR trial in September 2016, J.C. and O.L. testified that they did not want to live with mother because they did not feel safe with her. The children's court-appointed guardian ad litem (GAL) testified that mother could not be rehabilitated and that no circumstances existed under which the children should ever be returned to mother. In October, the district court ordered that mother's parental rights to all four children be terminated, concluding that (1) mother had substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child relationship; (2) mother was palpably unfit to be a party to the parent and child relationship; and (3) the children had experienced egregious harm in mother's care. In November, the court issued a clerically corrected version of the TPR order. Mother appeals.

D E C I S I O N

Mother argues that the district court erred in terminating her parental rights to the children because MCHHS failed to prove the three statutory bases for termination by clear and convincing evidence. "[Appellate courts] defer to the district court's decision to

terminate parental rights." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008); *see In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014) (stating that "termination of parental rights is always discretionary with the juvenile court"). An appellate court "review[s] the district court's findings to determine whether they address the statutory criteria for termination of parental rights and are not clearly erroneous." *Id.* at 660. "A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 665 (Minn. App. 2012) (quotation omitted). "[I]f 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, we will affirm."[2] *T.R.*, 750 N.W.2d at 661.

Mother first argues that the district court erred in concluding that clear and convincing evidence proved that she had substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child relationship under Minn. Stat. § 260C.301, subd. 1(b)(2) (2016). Parental rights to a child can be terminated when:

> the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental, or emotional health and development, if the parent is physically and financially able, and either reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of

[2] Mother does not challenge the district court's best-interests findings.

> the petition or reasonable efforts would be futile and therefore unreasonable.

Minn. Stat. § 260C.301, subd. 1(b)(2).

While mother denied physically or emotionally abusing the children and testified that the children lied about the abuse, the district court found that mother's testimony was not credible and noted that even C.L., whom mother described as honest and truthful, stated that mother physically abused the three elder children. The court found that the children's testimony was credible. J.C. and O.L. testified that they never wanted to return to mother's home because they were afraid. The record shows that mother swore at the children, "called J.C. a dog and an animal," threatened the children that she would beat and kill them or hire someone to hit them with a car, and told J.C. and O.L. that she would put their dead bodies in the garbage and that no one would look for them because no one cared about them. The record supports the district court's finding that mother physically abused the children because marks and scars on the children's bodies are consistent with their descriptions of the beatings and the objects with which mother beat them.

The GAL testified and opined that mother could not be rehabilitated and no circumstances existed under which the children should ever be returned to her. The GAL noted that, even with therapy and services, mother did not learn from her mistakes that led to the prior termination of her parental rights to another child in Iowa. Regarding the children in this case, the district court relieved MCHHS of its obligation to engage in reasonable efforts to rehabilitate mother and reunify her with the children because MCHHS established a prima facie case that mother subjected a child to egregious harm and that her

parental rights to another child had been involuntarily terminated. *See* Minn. Stat. § 260.012(a)(1), (2) (2016); *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003) (stating that "upon a district court's determination that a person's parental rights to another child previously have been terminated involuntarily, reasonable efforts for rehabilitation and reunification are not required"). After commencing the CHIPS proceeding, MCHHS nevertheless engaged in efforts to rehabilitate mother and provided her services under case plans developed for each of the children. The case plans addressed mother's chemical dependency, mental health, parenting skills, need for counseling and therapy, and history of domestic violence. Mother signed each case plan but failed to satisfy any of the case-plan requirements. Her failure to satisfy the case-plan requirements constitutes evidence of her noncompliance with the duties and responsibilities imposed upon her by the parent and child relationship. *See K.S.F.*, 823 N.W.2d at 666 ("Failure to satisfy requirements of a court-ordered case plan provides evidence of a parent's noncompliance with the duties and responsibilities under section 260C.301, subdivision 1(b)(2)."). The district court did not err in concluding that clear and convincing evidence proved that mother had substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child relationship under Minn. Stat. § 260C.301, subd. 1(b)(2).

Mother next argues that the district court erred in concluding that, under Minn. Stat. § 260C.301, subd. 1(b)(4) (2016), MCHHS proved by clear and convincing evidence that mother is palpably unfit to be a party to the parent and child relationship because her parental rights to another child were involuntarily terminated.

"A natural parent is presumed to be suitable to be entrusted with the care of [her] child and it is in the best interest of a child to be in the custody of his natural parent." *R.D.L.*, 853 N.W.2d at 136 (quotations omitted). But "[t]he government . . . has a compelling interest in identifying and protecting abused children and in safeguarding the physical and psychological well-being of children." *Id.* at 134 (quotations and citation omitted).

> When . . . the government has, in an initial proceeding, overcome that presumption of fitness through clear and convincing evidence that a parent cannot be entrusted to care for his or her children the statutory presumption of unfitness in Minn. Stat. § 260C.301, subd. 1(b)(4), relieves the government of its burden to again overcome the natural parent's presumption of fitness, at least until the parent produces evidence warranting a finding of fitness.

Id. at 136 (citation omitted); *see also* Minn. Stat. § 260C.301, subd. 1(b)(4) (stating that a parent's palpable unfitness is presumed "upon a showing that the parent's parental rights to one or more other children were involuntarily terminated"). "The statutory presumption directly serves the compelling government interest of protecting children because it facilitates the more expeditious resolution of cases involving children in need of protection." *R.D.L.*, 853 N.W.2d at 134. It "provides a mechanism to shorten a termination trial in the narrow instance in which clear and convincing evidence supported a previous finding that a child's best interests required termination, [and] directly serves the compelling government interest of protecting these children." *Id.* at 135.

"[W]hen the presumption of unfitness applies [under Minn. Stat. § 260C.301, subd. 1(b)(4)], a parent rebuts the presumption by introducing evidence that would justify a

finding of fact that [the parent] is not palpably unfit, and whether the evidence satisfies the burden of production is determined on a case-by-case basis." *Id.* at 137 (quotations omitted). "[T]he parent needs to produce only enough evidence to support a finding that the parent is suitable to be entrusted with the care of the children." *Id.* (quotation omitted).

Here, the district court found that mother "had a previous involuntary termination of her parental rights to her daughter in Buena Vista County, Iowa, which was affirmed by the Court of Appeals of Iowa on January 31, 2007." Mother argues that the finding is erroneous, claiming that the Iowa order was not offered into evidence and that the court therefore erred by shifting to her the burden of producing evidence that she is not palpably unfit to be a party to the parent and child relationship. But the record confirms that the Iowa parental-rights-termination order was offered into evidence and is part of the record on appeal. Moreover, mother admitted at trial that her parental rights to a daughter in Iowa were involuntarily terminated, as follows:

> COUNSEL: [Mother], you are the . . . mother of four children?
> (WHEREUPON, Interpreter and Mother talked.)
> THE INTERPRETER: Yes.
> COUNSEL: You actually are the mother of five children; is that correct?
> (WHEREUPON, Interpreter and Mother talked.)
> THE INTERPRETER: Yes.
> COUNSEL: You have — or had a daughter whose parental rights you lost in Iowa; is that correct?
> (WHEREUPON, Interpreter and Mother talked.)
> THE INTERPRETER: Yes.

Because the district court's finding is not clearly erroneous, the court did not err by presuming that mother is palpably unfit to be a party to the parent and child relationship and requiring her to rebut the statutory presumption. Mother failed to introduce evidence

that justifies a finding of fact that she is suitable to be entrusted with the care of her children and therefore failed to satisfy her burden of production.

Mother also argues that the district court erred in determining that her children have experienced egregious harm in her care, asserting that the record does not support a finding that it would be detrimental for her children to return to her 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 (2016). To justify the termination of parental rights, egregious harm must be 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." Minn. Stat. § 260C.301, subd. 1(b)(6) (2016).

The district court concluded that MCHHS established by clear and convincing evidence that, under Minn. Stat. § 260C.301, subd. 1(b)(6), the children have experienced egregious harm in mother's care. The court heard conflicting testimony about whether mother harmed her children. Resolution of the conflicts in the testimony depended entirely on whom the court believed. This court defers to the district court's credibility determinations. *See In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995). "[The district court] stand[s] in a superior position to appellate courts in assessing the credibility of witnesses." *Id.* (quotation omitted). "This is particularly true in the context of a case such as this, where the [district] court's opportunity to observe the parent and other

witnesses who are called to testify is so crucial to an accurate evaluation of what is best for the child." *Id.*

The record here contains sufficient evidence for the district court to conclude that the children experienced egregious harm in mother's care because mother emotionally and physically abused the children over a period of approximately eight years. In October 2014, mother beat J.C. "in the head so hard with a painted gold lamp that he required emergency hospital care and three stitches." Also in 2014, mother cut O.L. with a knife in his right forearm. In 2015, mother "covered all the of windows . . . , forced [J.C.] and [O.L.] to remove their clothing, . . . tied them up," and beat them with cable wire. O.L. said that "the beatings happen '24/7.'"

The children reported that mother beat them with her hands and with objects, such as "belts, shoes, wooden spoons, knives, hot oil, cable wires, lamps, metal hangers and rods and glass objects." O.L. reported that, when mother was angry with the children, she stepped on their throats and tried to choke them. J.C. has a mark on his neck that he attributes to mother biting him. C.L. reported that J.C. has a scar from mother hitting him with the metal part of a belt. J.C. said that "during some of these beating[s] he was hit over and over again greater than 50 times if [his] mother was 'really mad.'" He also said that he "has been hit on the abdomen and on the face" and that "[h]e has been hit until he has been dizzy." C.L. reported that mother repeatedly choked and hit him "with a metal hanger on multiple places on his body, over and over again." The children reported that mother called them dirty, dumb, ugly, and stupid and swore at them when she was angry and sometimes for no apparent reason.

Mother denied abusing her children and she specifically denied hitting, biting, or physically harming J.C. and O.L. She claimed that the boys were lying so that they could be out of the home and do whatever they wanted. Mother testified that she believes J.C. "is the one that is planning all this situation," because "he has a criminal mind." Mother claimed that no problems existed in the home and that she protected her children from hanging out with the bad crowd. The district court concluded that mother's testimony was not credible. The court found "that the continuous consistency across each of the children's statements further confirms the children's credibility and confirms that [mother]'s testimony was not credible." Mother's argument that there was insufficient evidence in the record for the court to conclude that the children suffered egregious harm therefore fails.

We conclude that clear and convincing evidence proves that the children suffered egregious harm in their mother's care so that their return to her care would be detrimental to them. *See* Minn. Stat. § 260C.007, subd. 14 (2), (3), (6) (stating that "Egregious harm includes, but is not limited to: . . . the infliction of 'substantial bodily harm' to a child, . . . conduct towards a child that constitutes felony malicious punishment of a child [and] . . . conduct towards a child that constitutes assault").

For the foregoing reasons, the district court did not abuse its discretion in terminating mother's parental rights to the children.

Affirmed.