STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2000

In the Matter of the Welfare of the Children of: R. M., Parent.

Filed May 15, 2017
Affirmed
Klaphake, Judge[*]

Ramsey County District Court
File No. 62-JV-16-1416

Patrick D. McGee, Forest Lake, Minnesota (for appellant R.M.)

John J. Choi, Ramsey County Attorney, Kathryn M. Eilers, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Torrina Burns, St. Paul, Minnesota (guardian ad litem)

Debra Kovats, St. Paul, Minnesota (for children)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Klaphake, Judge.

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

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

KLAPHAKE, Judge

Appellant RM challenges the district court's decision to terminate her parental rights to four of her children.[1] Because she did not overcome the statutory presumption of her unfitness to parent and because there is clear and convincing evidence that termination of appellant's parental rights is in the children's best interests, we affirm.

D E C I S I O N

I.

A parent is normally "presumed to be suitable to be entrusted with the care of [the parent's] child." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014) (quotation omitted). But after the involuntary termination of a parent's rights to another child or an involuntary change of custody, the parent is presumed palpably unfit to parent. Minn. Stat. § 260C.301, subd. 1(b)(4)(2016) ("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 or that the parent's custodial rights to another child have been involuntarily transferred to a relative."). The presumption is rebuttable, *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012), but shifts the burden of production to the parent to produce "enough evidence to support a finding that the parent is suitable to be

[1] At the time of the termination proceedings, appellant was the biological mother of six children: T.M., A.S., T.S., T.P., D.M., and S.J., who were born between the years 2003 and 2014. Appellant's parental rights to T.P. and D.M. were involuntarily terminated in February 2009 and January 2012, respectively.

entrusted with the care of the child[]." *R.D.L.*, 853 N.W.2d at 137 (quotation omitted). Consideration of whether the parent has met the burden of production is "determined on a case-by-case basis." *J.W.*, 807 N.W.2d at 446. The parent does not need to meet the clear-and-convincing evidentiary standard for termination; the parent must produce evidence of improved parenting skills that "if believed, would justify a finding contrary to the assumed fact" of the parent's palpable unfitness to parent. *Id.* at 447 (quotation omitted). This court gives de novo review "to a district court's determination as to whether a parent's evidence is capable of justifying a finding in his or her favor at trial." *Id*. at 446.

Appellant argues that the district court erred in ruling that she did not rebut the presumption of her unfitness to parent because the court "did not reference the current state of the presumption law that is stated clearly in *R.D.L.* . . . that the presumption is easily rebuttable." She asserts that her presumptive palpable unfitness to parent was overcome because the county did not take action to terminate her parental rights to S.J. at the time of that child's birth, even though prior court orders had terminated her rights to two of her children and placed the custody of her three other children out of her home, and because she was again allowed in 2015 "to parent [t]he very children who were removed from her care."

The district court addressed and rejected these arguments in its termination order, relying on several decisions that discuss the evidence sufficient to overcome the presumption of palpable unfitness. *See In re Welfare of the Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007); *In re the Child of A.S. and A.M.*, 698 N.W.2d 190, 194 (Minn. App. 2005), *review denied* (Minn. Sept. 20, 2005); *D.L.R.D.*, 656 N.W.2d at 250-51. The

district court's findings and ultimate ruling incorporate the mandate of *R.D.L.* that the parent must "rebut[] the presumption [of palpable unfitness] by introducing evidence that would justify a finding of fact that [the parent] is not palpably unfit." 853 N.W.2d at 137. The district court specifically considered and rejected appellant's argument that the county's action of failing to initiate termination proceedings involving S.J. after that child's birth in 2014, and of allowing appellant to parent A.S. and T.S. after their father became unavailable to parent them in 2015, provides sufficient evidence to overcome her presumption of unfitness. The district court stated that neither the caselaw, the language of the termination statute, nor policy reasons favored allowing the statutory presumption of palpable unfitness to "disappear" as a matter of law "upon placement of a child with a parent after an involuntary termination" to another child had occurred. The district court ruled that the agency decision to allow appellant to care for S.J. after her birth should be considered along with other evidence in determining whether the presumption of palpable unfitness was overcome. The court determined that "[t]he presumption [of palpable unfitness] was not overcome despite the fact that the evidence in favor of overcoming the presumption included the agency's prior decision."

We observe no error in the district court's ruling. The statutory language that sets forth the presumption of unfitness to parent is written in absolute terms: "[i]t is presumed" that a parent is palpably unfit if the parent's rights to other children have been terminated or if the parent's custodial rights have been involuntarily transferred to another parent. Minn. Stat. § 260C.301, subd. 1(b)(4). The statute contains no other provisions to alter this mandate. This court "presume[s] that plain and unambiguous statutory language manifests

legislative intent. If statutory language is plain and unambiguous, the court must give it its plain meaning." *In re Matter of Welfare of J.M.*, 574 N.W.2d 717, 721 (Minn. 1998) (quotation omitted). The plain language of the statute supports the district court's determination that the presumption of unfitness applies in this case.

Further, other than the actions taken by the county, the record includes insufficient evidence to rebut the presumption. Appellant called two witnesses who were affiliated with an organization to assist former prostitutes, but the district court found that they were unable to testify regarding appellant's present ability to parent. The other witness called by appellant, a caseworker, provided testimony that was supportive of termination, and she recommended termination as in the children's best interests.

The district court found that appellant, the remaining witness, also "presented no evidence that demonstrated her current ability to safely parent her children" although appellant's overall testimony was supportive of her current ability to parent. In addressing the rebuttal of a statutory presumption in a forfeiture action, the supreme court stated, Generally, "a district court should not engage in a qualitative evaluation or weighing of the evidence when deciding whether a claimant has produced sufficient evidence to rebut [a] statutory presumption[.]" *Jacobson v. $55,900 in U.S. Currency*, 728 N.W.2d 510, 523 (Minn. 2007). But the supreme court declined "to adopt a per se rule prohibiting any consideration of witness credibility," noting that in some cases "witness credibility may be important, or even essential, for example, when the claimant's only evidence is his own testimony, and no reasonable fact finder would believe that testimony." *Id*. The district court made findings on appellant's chemical dependency, mental health, domestic

violence, and relationship with the children that contradicted appellant's testimony and supported its determination that the presumption of parental unfitness was not rebutted. Consistent with the reasoning of *Jacobson*, the district court permissibly weighed and rejected appellant's testimony because of the very strong evidence of appellant's current unfitness to parent. For these reasons, the district court did not err in determining that appellant did not overcome the presumption that she was palpably unfit to parent her four children.

II.

In termination proceedings, "the best interests of the child must be the paramount consideration[.] . . . Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2016). Consideration of a child's best interests includes the child's interest in preserving the parent-child relationship, the parent's interest in preserving the parent-child relationship, and any other competing factors. Minn. R. Juv. Prot. 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).

This court reviews a district court's best-interests determination for an abuse of discretion. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008). "An order terminating parental rights must explain the district court's rationale for concluding why the termination is in the best interests of the children." *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003).

The district court made findings to suggest that all of the best-interests considerations favor termination of appellant's parental rights. The children have been placed out of appellant's care for a significant time period, did not thrive or were endangered when they were in her care, and have thrived when they were placed out-of-home. Although appellant has expressed love for her children and a desire to continue to parent them, she has not demonstrated the ability to do so for the foreseeable future for numerous serious reasons. There is a well-documented dichotomy in the environment, care, and well-being of the children when they lived with appellant and when they lived with others. Some of the children have expressed a very strong desire not to visit with appellant, much less to live with her. The district court identified these issues in its best-interests findings, and its decision on the children's best interests must be preserved as a proper exercise of its discretion.

Affirmed.