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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0744**

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

**Filed August 21, 2017
Affirmed
Worke, Judge**

Mower County District Court
File No. 50-JV-16-2529

Daniel T. Donnelly, Austin, Minnesota (for appellant D.K.)

Kristen Nelsen, Mower County Attorney, Aaron Jones, Assistant County Attorney, Austin,
Minnesota (for respondent Mower County Human Services)

Todd Schoonover, Hollandale, Minnesota (guardian ad litem)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Klaphake,
Judge.*

UNPUBLISHED OPINION

WORKE, Judge

Appellant-father challenges the termination of his parental rights, arguing that the record does not support the district court's determinations that (1) he failed to rebut the presumption that he is a palpably unfit parent, (2) he has failed to comply with the duties

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

of the parent-child relationship, and (3) termination is in the children's best interests. We affirm.

FACTS

In 2012, appellant-father D.K.'s parental rights to X.N. were involuntarily terminated. In 2013, a child-in-need-of-protection-or-services (CHIPS) matter was initiated involving D.K.'s child, A.L-K., due in part to D.K.'s history of abusive behavior toward A.L-K.'s mother, K.L. K.L. worked a case plan and the matter was closed. D.K. did not participate in a case plan.

In August 2016, respondent Mower County Health and Human Services (county) received a maltreatment report after law enforcement responded to D.K.'s suspected drug overdose while he was caring for his children, A.L-K. and B.L-K. D.K. told law enforcement that he had taken K.L.'s prescription medication and used methamphetamine.

In December 2016, the county petitioned to terminate D.K.'s parental rights to A.L-K. and B.L-K. The district court held a hearing on the petition. K.L. testified that the 2013 CHIPS matter was due, in part, to D.K.'s drug use, and physical and mental abuse toward her. K.L. testified that D.K. did not participate in a case plan because of his drug use and, around that time, he violated his probation and went back to prison. K.L. testified that the CHIPS case was closed as to D.K. because he was in prison.

K.L. testified that prior to August 2016, D.K. had "[b]arely any" contact with the children. In August 2016, K.L. asked D.K. if he would babysit while she worked. She testified that she received a phone call that 911 had been called to her home. When she arrived at her home, D.K. was being transported by an ambulance to a hospital because he

had taken K.L.'s prescription medication. Since that incident, D.K. has had contact with the children twice. One time, K.L. visited D.K.'s mother and D.K. showed up. The second time, D.K. called K.L. and A.L-K. answered the phone. K.L. testified that A.L-K. is afraid of D.K. K.L. testified that her husband, L.A., has been a father figure to the children and wants to adopt them.

A guardian ad litem (GAL) testified that he met with the children one time and they did not mention D.K. The GAL testified that the children were "very bonded" to L.A. and that one of the children called L.A. "dad" during the GAL's visit at the home.

The GAL testified that his limited contact with D.K. was "[d]ifficult," "angered," and "very unstable." He testified that D.K. once called him and stated that K.L. and the children were dead and the GAL had to find their hidden bodies. D.K. called the GAL a second time and stated that he wanted to see the children. The GAL told D.K. that he could not make that decision. The GAL testified that D.K. repeatedly threatened to "kill" him, to "f-ing kill" him. The GAL testified that D.K.'s threats were so "bold" and "explicit" that he shared his concern with security at the courthouse before the hearing.

The GAL testified that D.K. "never presented . . . as being a stable individual and has never presented to . . . being involved in the children's life." The GAL testified that it was "[n]ot at all" safe for the children to be around D.K. The GAL recommended that D.K.'s parental rights be terminated, which would allow for them to be adopted by L.A., "the man they consider their father."

D.K. testified that the termination of his parental rights to X.N. was due to abandonment and that he did not have a significant relationship with X.N. D.K. testified

that he improved himself since his parental rights to X.N. were terminated, claiming that he called the children from prison and when he was out of prison he was home every day. D.K. testified that the CHIPS matter involving A.L-K. was closed after he participated in services and “everything checked out good-to-go,” and had “nothing to do” with him going back to prison.

D.K. testified that he was subject to a civil commitment after being found to be chemically dependent. He testified that he spent time in a detox facility before transferring to a treatment facility, which he left against medical advice due to “drug use at the facility that [he] didn’t want to be around.” D.K. testified that he has been diagnosed as chemically dependent, bipolar, and having borderline paranoia schizophrenia. He also suffers with a post-traumatic stress disorder, an anxiety disorder, and depression. D.K. testified that treatment offered while he is incarcerated is limited, but he has participated in weekly therapy sessions for several months and is on medication.

D.K. testified that in August 2016, when he was watching the children, K.L. insisted that he take her anxiety medication, which led to him having a panic attack. He claimed that he has seen the children “[n]umerous times,” since that incident, and that prior to that incident he “was in [the children’s] life every day.”

D.K. testified that he provides for the children’s needs “[t]o the best of [his] ability” by providing diapers and diaper wipes; making sure the children’s shots are up to date; attending doctor visits; and provided clothing, shelter, food and “anything they needed at all times.” He testified that he provides for the children’s mental-health needs by “just being there to support them . . . as a loving father. . . . Giving them the care and love that

they need.” D.K. testified that he provides for the children’s emotional needs by teaching time-outs, correcting the children’s wrongs, and telling them they are loved.

The district court terminated D.K.’s parental rights after finding that court orders evidencing the involuntary termination of D.K.’s parental rights to X.N. established a presumption that D.K. is palpably unfit to be a parent to the children. The district court concluded that D.K. failed to rebut the presumption that he is palpably unfit to parent the children. The district court concluded that termination of D.K.’s parental rights is in the children’s best interests. This appeal followed.

D E C I S I O N

A district court may terminate parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and the court determines that termination is in the children’s best interests. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). This court reviews the district court’s findings for clear error. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008). 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.” *Id.* at 660-61 (quotation omitted). This court reviews the district court’s decision to terminate parental rights for an abuse of discretion. *In re Welfare of the Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). An abuse of discretion occurs if the district court improperly applied the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

If a parent’s rights to another child have been involuntarily terminated, a presumption arises that the parent is palpably unfit to be a party to the parent-child

relationship. Minn. Stat. § 260C.301, subd. 1(b)(4) (2016). If the presumption of palpable unfitness applies, the parent has the burden to introduce evidence demonstrating that he is not palpably unfit. *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). To meet his burden, the parent must produce evidence showing that he “is suitable to be entrusted with the care of the children.” *R.D.L.*, 853 N.W.2d at 137 (quotation omitted). This court reviews de novo the district court’s determination that a parent’s evidence failed to meet the burden of establishing that he is not palpably unfit. *J.W.*, 807 N.W.2d at 446.

Here, the presumption applies because D.K.’s parental rights to X.N. were involuntarily terminated. D.K. argues that he rebutted the presumption that he is palpably unfit by demonstrating that “he has worked with mental health practitioners and is actively seeking additional services to support additional changes in his life.” The district court found that there was no credible evidence demonstrating that D.K. is not palpably unfit. The district court concluded that the evidence demonstrated that D.K. failed to improve his parenting abilities and “continues to be mentally unstable and palpably unfit to parent the children.” The record supports the district court’s conclusion.

First, in order to meet his burden, D.K. had to produce evidence sufficient to support a finding that he “is suitable to be entrusted with the care of the children.” *See R.D.L.*, 853 N.W.2d at 137 (quotation omitted). But the last time that he was left to care for the children in late August 2016, 911 was called because D.K. took K.L.’s prescription medication and methamphetamine. And not long after that, D.K. was subject to a civil commitment due to

his chemical dependency, which shows that his chemical dependency is an issue that D.K. has not yet adequately addressed.

Second, the district court found that when the 2013 CHIPS matter was closed because K.L. completed a case plan, D.K. was incarcerated and did not complete a case plan. K.L. testified that the CHIPS matter was closed as to D.K. because he “went back to prison.” Regarding the CHIPS matter, D.K. testified:

We had gone through the proceedings with the county workers and the social workers. . . . We had numerous meetings . . . with county workers, social workers, Guardian ad Litem, at the time. . . . We also had some case planning that we did with me, [K.L.], our family members, you know, as in reference to a support system; who is in the child’s lives, her family, my family, and vice versa. That ended up closin[g] because everything checked out good-to-go, and it was up to their standards. And then they no longer needed to come over.

D.K.’s narrative in no way explains how he worked a case plan and does nothing to satisfy his burden to prove that he is not palpably unfit to parent the children.

Finally, D.K. testified about how he meets the children’s needs. But the district court found “no credible evidence” showing that D.K. ever provided for the children’s needs, care, health, or development. The district court found that D.K.’s testimony was “not credible,” stating:

[D.K.] has a significant criminal history, with multiple assault convictions and current pending criminal charges In December 2016, [D.K.] was ordered . . . in a civil commitment matter . . . to begin chemical dependency treatment, but he left the treatment center against medical advice shortly thereafter. To date, [D.K.] has not completed any chemical dependency treatment program. When questioned . . . about his chemical dependency, [D.K.] refused to admit to the use of any drugs

that were not prescribed, which is in clear contradiction to his well-documented history of methamphetamine use.

The district court's findings are supported by the record. D.K. admitted to having a significant criminal history, stating that he has "eight or so" assault convictions. D.K. admitted that he "left [the treatment facility] against medical advice" and is "still under commitment." The petition to terminate D.K.'s parental rights referenced D.K.'s methamphetamine use. And K.L. testified that the 2013 CHIPS matter was initiated, in part, due to D.K.'s drug use and that he did not participate in services because of the same.

Based on this record, D.K. has failed to rebut the presumption that he is palpably unfit to parent the children. Because it is presumed that D.K. is a palpably unfit parent, at least one statutory ground for termination is supported by clear and convincing evidence.

The district court concluded that termination of D.K.'s parental rights is in the best interests of the children. In any termination-of-parental-rights proceeding, "the best interests of the child[ren] must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2016). "[If] the interests of parent and child[ren] conflict, the interests of the child[ren] are paramount." *Id.*

D.K. argues that he "listed the many ways in which he was in contact with and supported his children." The district court disagreed. The district court found "no credible evidence in the record indicating that [D.K.] has ever provided the children with food, clothing, shelter, education or other care and control necessary for the children's health and development. Nothing in the record indicates [that] [D.K.] has even paid child support for the children." The district court also found that D.K. has little to no relationship with the

children. The district court found that it is “unsafe to return the children to [D.K.]’s care as he is under civil commitment for chemical dependency, has recently made violent threats, has made statements that his children are dead, and has used methamphetamine as recently as August 30, 2016.” The record supports the district court’s findings.

K.L. testified that prior to August 2016, D.K. had “[b]arely any” contact with the children. And since his suspected drug overdose in August 2016, D.K. has had only limited contact with the children twice. The GAL testified that D.K. told him that K.L. and the children were dead and that their bodies were hidden. The GAL also testified that D.K. threatened to “kill” him, to “f-ing kill” him when he told D.K. that he could not make the decision whether D.K. could see the children.

Finally, D.K. argues that he “is not necessarily seeking full custody” and should be entitled to “parental time with his children.” He also asserts that the termination is an “end around” in order for K.L.’s husband to adopt the children rather than a “consideration of [his] rights as to his children.” But these arguments focus on what D.K. wants and believes that he is entitled to. The records shows that at least one child is fearful of D.K. The record also shows that the children are bonded to K.L.’s husband, call him dad, and consider him their father. D.K.’s interest in a relationship with his children conflicts with the children’s interests, and the children’s interests are paramount. *See id.* Based on the entire record, the district court did not abuse its discretion by terminating D.K.’s parental rights.

Affirmed.