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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0757

In the Matter of the Welfare of the Child of:
S. P. and C. G., Parents

Filed October 23, 2017
Affirmed
Stauber, Judge[*]

Kandiyohi County District Court
File No. 34-JV-17-24

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellant mother S.P.)

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Dawn Weber, New London, Minnesota (for father C.G.)

Geri Krueger, Glenwood, Minnesota (guardian ad litem)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Stauber, Judge.

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

STAUBER, Judge

Appellant challenges the termination of her parental rights, arguing that she rebutted the presumption that she is a palpably unfit parent and that the record does not show that termination is in the child's best interests. We affirm.

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

FACTS

On January 24, 2017, appellant-mother S.P.'s parental rights to her two children were involuntarily terminated. On February 7, 2017, appellant gave birth to H.P. Respondent-county petitioned to terminate appellant's parental rights to H.P., alleging that she was presumed to be a palpably unfit parent because her parental rights to her older children were involuntarily terminated.[1]

On April 18, the district court held a hearing. Appellant testified that she used drugs since she was 17 years old (nearly ten years). She testified that she used marijuana while she was pregnant with H.P. and that H.P. tested positive for marijuana at birth. Appellant testified that she attempted inpatient treatment at least three times, but was never "ready" because she did not feel she had an addiction. Appellant testified that she last attempted inpatient treatment on February 21, 2017. While there, appellant was told that she would be able to visit H.P. only one day per week, which caused her to threaten to cut herself. Appellant testified that she had been a "bad cutter for a long time" but had not cut herself in over a year. Appellant left inpatient treatment the next day. She testified that she sought approval to attend outpatient treatment so that she could spend more time with H.P. Appellant testified that she began outpatient treatment on March 30 and has 60 hours remaining. Appellant testified that she also attends NA meetings. Appellant testified that she has abstained from marijuana for six months and methamphetamine for 14 months.

[1] C.G. is the children's father. His parental rights were involuntarily terminated in this action. He does not challenge the termination of his parental rights.

Appellant testified that she has been employed for a little over one month. She works 6:00 a.m. to 2:00 or 3:00 p.m. and is typically off on Wednesday. Prior to her current employment, appellant held two jobs that each lasted approximately three months; the last was over a year and a half ago.

Appellant testified that she has Crohn's disease, and admits a connection between the disease and her drug use, but stated that she has not been sick since she removed the stress from her life. Appellant identified that "stress" as "all the friends that [she] used to go with [to do drugs]. The theft that [she] got charged with, the drug habit that [she] had." Appellant testified that she has been living with her mother since she was released from jail and plans to stay there because she does not have enough money to live on her own. She testified that her mother would provide child care for H.P. when she worked.

Appellant testified that she was not in a romantic relationship, but her Facebook page states that she is in a relationship with J.P. The record shows that J.P. has an extensive criminal history, including drug charges. Appellant claimed that she indicated on Facebook that she is in a relationship with J.P. because she thinks that knowledge of this relationship will discourage certain people from contacting her. Appellant testified that she recently visited J.P. in jail and is trying to be a sober person to him while he attempts to change. Appellant admitted that she posted on Facebook "the other day" that she loved J.P. and that he is a great person.

Appellant testified that although she was diagnosed with PTSD and as bipolar, she is not doing anything to address her mental health because "it's changed a lot since [she]

stopped using [drugs]." Appellant testified that her mental-health issues are under control because she does "journaling" and talks to her sponsor.

Appellant testified that although she waited for the county to offer her parenting classes, she looked online for "different parenting things[.]" Appellant testified that she could not "mentally or physically take care of [her other children] due to [her] illness," but claimed that she is no longer depressed, cares more about herself, and thinks positively every day about her growing strength.

Appellant testified that since H.P.'s birth, she had the opportunity to see her three times a week - approximately 30 visits. Appellant testified that she saw H.P. approximately 12 times because of scheduling conflicts and her work schedule.

Appellant's mother testified that she has seen no indication that appellant is using drugs. She testified that appellant has the potential to be a good parent. Appellant's mother is on probation for 25 years for aiding and abetting second-degree sale of a controlled substance.

A social worker testified that she has concerns about appellant parenting H.P. because H.P. needs a "sober parent[,]" "a safe and stable [drug-free] home[,]" and "a parent who's secure with their mental health." She did not approve of appellant's mother providing child care because appellant's mother would not meet the requirements to be a county-approved child-care provider.

A guardian ad litem (GAL) testified that it is not in H.P.'s best interests for appellant to parent her because appellant used drugs multiple times a day during her pregnancy, had no interest in inpatient treatment, and has a history of not giving "credible narrative[.]"

The GAL was concerned about appellant's infrequent visits with H.P. and her inability to see reason to address her mental-health issues.

The district court ordered the termination of appellant's parental rights to H.P. after concluding that she failed to rebut the presumption that she is a palpably unfit parent and that it is in H.P.'s best interests to terminate appellant's parental rights. This appeal followed.

D E C I S I O N

Appellant argues that the district court abused its discretion by terminating her parental rights. 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 child'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). We review the district court's decision to terminate parental rights for an abuse of discretion. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). An abuse of discretion occurs if the district court improperly applies 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). A parent may rebut the

presumption by introducing evidence demonstrating that she 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 her burden, a parent must produce evidence showing that she "is suitable to be entrusted with the care of the child[]." *R.D.L.*, 853 N.W.2d at 137 (quotation omitted). A parent need not meet the clear-and-convincing evidentiary standard for termination; rather, she must produce evidence of improved parenting skills that "if believed, would justify a finding contrary to the assumed fact" that she is palpably unfit. *J.W.*, 807 N.W.2d at 447 (quotation omitted). Whether a parent has satisfied this burden is "determined on a case-by-case basis." *Id.* at 446. We review de novo the district court's determination that a parent's evidence failed to meet the burden of establishing that she is not palpably unfit. *Id.* at 446.

Here, the presumption applies because appellant's parental rights to her older children were involuntarily terminated on January 24, 2017. She later gave birth to H.P. The hearing on the petition was held on April 18. According to appellant, she did the following between January 24 and April 18: (1) began outpatient chemical-dependency treatment, (2) abstained from drug use, (3) attended NA meetings, (4) obtained employment, (5) removed stress from her life, (6) abstained from romantic relationships, (7) controlled her mental health through "journaling" and talking to a sponsor, (8) searched Facebook for parenting instructions, (9) cared more about herself, and (10) visited H.P. approximately 12 times. Other evidence shows that appellant cares appropriately for a friend's child and interacts well with H.P. during visits. Appellant's social worker described her as more "proactive" due to her improved efforts at maintaining contact.

Appellant had a negative drug test.[2] And appellant's mother testified that appellant gave no indication that she is using drugs. The district court concluded that appellant did not rebut the presumption that she is a palpably unfit parent. We agree.

First, as of April 18, appellant had been in outpatient treatment fewer than three weeks. This was after she left inpatient treatment on February 22, the day after she was admitted, because she threatened to harm herself if she remained in inpatient treatment. There is no evidence that between February 22 and March 30 appellant sought or received chemical-dependency treatment other than attending NA meetings, and she failed to explain why she waited over one month to attend outpatient treatment. Second, appellant testified that she last used marijuana on October 12, 2016. However, H.P. tested positive at birth on February 7, 2017, which, as the district court found, indicated "use much more recently."

Third, the record shows that appellant is likely in a relationship with J.P., who has a lengthy criminal history. The district court found appellant's statements about her lack of relationship with J.P. not credible. Fourth, appellant's evidence does not show that she is doing anything to address her mental-health issues despite being diagnosed with PTSD and as bipolar. The district court noted concern about appellant's lack of attention to her mental health, especially after she posted on social media that she wanted to kill herself and threatened to cut herself at inpatient treatment.

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[2] The results of a second test were not yet reported.

Fifth, appellant has not taken parenting classes. The record shows that appellant left her older children in the care of her family before her parental rights were terminated. Thus, she has not shown that she ever learned how to adequately parent an infant. Additionally, her visitation with H.P. has been monitored; she has never been alone with H.P. Sixth, appellant has not found housing. She testified that she has no immediate plans to leave her mother's home and that her mother will care for H.P. when she works. But appellant's mother has a felony drug conviction and would not meet requirements for approval as a child-care provider.

Finally, and most importantly, although appellant was allowed to visit H.P. three times a week since H.P.'s birth in February, she visited her only 12 times out of a possible 30 times, due to work conflicts. However, appellant testified that her work day ended around 2:00 or 3:00 p.m. and she had Wednesdays off. Visitation records show that appellant's visits began at 3:00 p.m. or later and lasted only one-and-a-half hours. Additionally, H.P. was born February 7 and appellant had been working for only one month at the time of the hearing on April 18; thus, if appellant began working around March 18, her work conflicts fail to explain the missed visits over the five weeks between February 7 and March 18. Moreover, appellant testified that she threatened to cut herself in inpatient treatment because she was told that she would be able to see H.P. only one day per week. While she claims that she needed outpatient treatment to see H.P. more often, she visited two-month-old H.P. only 12 times in 70 days.

Appellant claims that she introduced "more than enough evidence of fitness"; however, the record shows that she: (1) has been receiving outpatient treatment for only

three weeks, (2) was not truthful about her drug abstinence, (3) is likely in a relationship with an individual with a lengthy criminal history, (4) is not addressing her mental-health issues, (5) is not taking parenting classes, (6) is not in stable housing, and (7) rarely visits H.P. Appellant has failed to rebut the presumption that she is a palpably unfit parent. Because it is presumed that appellant is a palpably unfit parent, at least one statutory ground for termination is supported by clear and convincing evidence.

Appellant also argues that the district court gave "insufficient reasons why the termination of [her] parental rights was in the best interests of the child."

In any termination-of-parental-rights proceeding, "the best interests of the child must be the paramount consideration[.]" Minn. Stat. § 260C.301, subd. 7 (2016). "[If] the interests of parent and child conflict, the interests of the child are paramount." *Id.* 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. P. 39.05, subd. 3(b)(3). "Competing interests include such things as a stable environment [and] health considerations . . . ." *In re Welfare of Children of K.S.F.*, 823 N.W.2d 656, 668 (Minn. App. 2012) (quotation omitted). "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). We review 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).

The district court concluded: “It is detrimental to the best interests of [H.P.] to have any contact with . . . [appellant].” The district court found that H.P.’s interests are served by placement with stable parents with whom she can bond. The district court found that “[a] drug free environment is of paramount importance for [H.P.], and [appellant] has not proven she can provide that.” The district court stated:

> [H.P.] needs stability and predictability, and [appellant] simply has not proven she can provide that. Her history of drugs and crime is extensive, and her history of treatment, rehabilitation and responsibility is brief. It is not in the best interests of the child that [appellant] have parental rights of H.P. because she is too much of a question mark. It was a mere three months ago when [appellant] gave up her parental rights to her older children on an involuntary basis.

The district court thoroughly analyzed why termination is in H.P.’s best interests. *See K.S.F.*, 823 N.W.2d at 668 (concluding that children’s needs for a stable and safe home, stability, and predictability were best served by terminating parental rights). The district court did not abuse its discretion in its determination regarding H.P.’s best interests.

Affirmed.