STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1020

In the Matter of the Welfare of the Children of:
C. P. S., and J. E. S., Parents.

Filed December 4, 2017
Affirmed
Johnson, Judge

Wright County District Court
File No. 86-JV-17-541

Cathleen Gabriel, Annandale, Minnesota (for appellant-mother C.P.S.)

J.E.S., Sioux City, Iowa, (*pro se* respondent-father)

Thomas N. Kelly, Wright County Attorney, John A. Bowen, Assistant County Attorney, Buffalo, Minnesota (for respondent Wright County Health and Human Services)

Laura Johnson, Monticello, Minnesota (guardian *ad litem*)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Bratvold, Judge.

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

JOHNSON, Judge

C.P.S. is the biological mother of a nine-year-old boy, D.S., and a two-year-old girl, E.S. The district court terminated C.P.S.'s parental rights to D.S. and E.S. on the grounds that she did not comply with the duties of the parent-child relationship, that she is a palpably unfit parent, and that reasonable efforts have failed to correct the conditions that

led to the children's out-of-home placement. The district court also found that termination of C.P.S.'s parental rights is in the children's best interests. We affirm.

FACTS

C.P.S. married J.E.S. in 2008 while the couple was living in Nebraska. C.P.S. gave birth to D.S. that same year. In 2012, the Nebraska Division of Children and Family Services began providing services to C.P.S. and J.E.S. and implemented a case plan. The case plan addressed the need for progress on understanding "age appropriate expectations and responsibilities of a four year old," supervising D.S., and maintaining a safe living environment.

The couple relocated to Minnesota in the winter of 2012. C.P.S. gave birth to E.S. in 2015. By 2016, the couple had five children living in their home: D.S., E.S., and three children of J.E.S. and/or his former girlfriend. The children's teachers observed that they frequently were late for school, without having eaten breakfast, and frequently wore dirty clothes that smelled of cat urine. In March 2016, D.S. explained one day that he and the other children had not had breakfast because they "did not want to wake [C.P.S.] up from sleeping." A school social worker reported that the children were not properly clothed in winter and that D.S. had behavioral issues. Further investigation by the county resulted in a finding that C.P.S. was not responsive to the children's needs.

In May 2016, Wright County petitioned the district court for an order declaring the children in need of protection or services (CHIPS). The district court granted the CHIPS petition and ordered that the children be removed from the home and that C.P.S. work with a social worker and submit to a psychological assessment. A psychologist diagnosed

C.P.S. with "major depressive disorder, recurrent, moderate" and "adjustment disorder with anxiety." The psychologist noted that C.P.S.'s "symptoms of depression have been getting worse . . . with increased feelings of worthlessness, especially during and following her pregnancy with [E.S.]." The psychologist stated that C.P.S.'s depression and anxiety "interfere with functioning in areas of sleep disturbance, quality of child care affected, discord in relationship(s), inability to perform daily household routines and decreased quality of life." A therapist recommended weekly individual treatment sessions to develop treatment goals and a therapy plan, but C.P.S. attended therapy only sporadically.

In August 2016, the children were returned to C.P.S.'s home for a trial home visit. The district court ordered C.P.S. to provide a safe and clean home environment. In December 2016, the district court returned the children to C.P.S. under the county's protective supervision. But in early 2017, the county received new reports that the children in C.P.S.'s household continued to attend school smelling of cat urine and without appropriate winter clothing. The home was unclean and unsafe because of pet waste throughout the house and other unsanitary and unsafe items within the children's reach. At the county's request, the district court ordered the children removed from the home and placed in the county's custody.

In February 2017, the county petitioned the district court to terminate C.P.S.'s and J.E.S.'s parental rights to D.S. and E.S. The matter was tried on three days in May 2017. The county called eight witnesses: a psychologist; two therapists; a police officer, who had observed the conditions in the home; and four social workers, who testified to the children's improvement since their removal from C.P.S.'s home.

C.P.S., with the assistance of counsel, presented the testimony of three witnesses. She testified on her own behalf that she has made improvements in managing her stress, anxiety, and depression. C.P.S. called the children's foster mother, who testified that the children love their parents, but the foster mother did not express an opinion as to whether the children should be reunified with their parents because she does not "know everything" about the situation. C.P.S. also called an adult step-daughter, S.B., who testified that she is available to help C.P.S. care for the children and that C.P.S. has a loving relationship with her children.

J.E.S. waived his right to counsel and testified on his own behalf. He testified that his previous job required him to be away from home for long periods of time but that he now is home more often to help C.P.S. with parenting and household duties. He acknowledged, however, that the house still is in an unsafe condition.

The guardian *ad litem* testified that termination of parental rights would be in the best interests of the children and that she does not have confidence that C.P.S. and J.E.S. can provide parenting that is beneficial to the children. The guardian *ad litem* also testified that foster care is necessary to ensure stability and consistency for D.S. and E.S.

In June 2017, the district court issued a 45-page order and memorandum in which it found that the county had proved, by clear and convincing evidence, each of the three alleged statutory grounds for termination and also had proved that termination of both parents' parental rights is in the best interests of the children. Accordingly, the district court granted the county's petition and terminated C.P.S.'s and J.E.S.'s parental rights to D.S. and E.S. C.P.S. appeals.

D E C I S I O N

This court reviews the termination of parental rights "to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). A factual finding is clearly erroneous "if it is either manifestly contrary to the weight of the evidence or not reasonable supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660-61 (Minn. 2008) (quotation omitted). We are mindful that "[p]arental rights are terminated only for grave and weighty reasons," *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990), but we give "considerable deference to the district court's decision to terminate parental rights," *S.E.P.*, 744 N.W.2d at 385. Ultimately, we apply an abuse-of-discretion standard of review to a district court's finding as to whether a statutory basis for terminating parental rights is present. *In re Welfare of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

I. Statutory Grounds for Termination

C.P.S. first argues that the district court erred by finding that she neglected the duties of the parent-child relationship and that she is palpably unfit to be a parent. C.P.S. does *not* argue that the district court erred by finding that reasonable efforts have failed to correct the conditions that led to the children's out-of-home placement. "Termination of parental rights will be affirmed as long as *at least one statutory ground for termination* is supported by clear and convincing evidence and termination is in the child's best interests." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 55 (Minn. 2004) (emphasis added). By not

challenging the district court's finding that reasonable efforts have failed to correct the conditions that led to the children's out-of-home placement, C.P.S. has effectively conceded that one of the three statutory grounds of the district court's decision is proper, and that ground is sufficient by itself. *See id.* Nonetheless, we will proceed to consider C.P.S.'s argument that the district court erred by finding that she is palpably unfit to be a parent.

A district court may terminate parental rights to a child if it finds

> that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2016). Proving palpable unfitness is an onerous burden. *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). The county must prove "a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *Id.* (quotation omitted).

In this case, the district court found that C.P.S.'s mental-health problems are significant and that her prognosis for improvement is poor. The district court found that C.P.S. has not made sufficient progress "in both her parenting skills and mental health treatment" and is not "able to permanently care for [D.S.] or [E.S.] for a prolonged period of time." The district court also found that C.P.S.'s "mental illness directly affects her

ability to parent, primarily because it is untreated and has resulted in severe neglect of multiple children including [D.S.] and [E.S.]." The district court further found that C.P.S.'s "unresolved mental health issues have already and would likely continue to endanger the children's physical and emotional health." The district court concluded that the county had proved by clear and convincing evidence that C.P.S. "is palpably unfit to be a party to the parent and child relationship."

The evidence in the record supports the district court's findings. A psychologist testified that C.P.S. suffers from major depression and anxiety. The psychologist also testified that C.P.S.'s mental-health issues "aren't being treated," that C.P.S. cannot make decisions by herself and feels "unstable or insecure if [she has] to be left alone to function independently," and that C.P.S. does not have the ability to improve her parenting abilities. A social worker testified that C.P.S.'s mental health plays a crucial role in her parenting abilities and that C.P.S. has a tendency to isolate herself and ignore the children's needs. The social worker testified that C.P.S. likely would not attend therapy because she struggles to attend therapy without children in her care. Multiple witnesses testified to the pattern of incidents in which the home was determined to be filthy and unsafe and in which the children attended school in clothing smelling of cat urine.

C.P.S. contends that she is not palpably unfit because her mental health has improved significantly and that "the cleanliness issues in the home that led to the out-of-home placement no longer exist." C.P.S.'s evidence was contradicted by the county's evidence. The district court, as the fact-finder, found the county's evidence more persuasive. On appellate review, this court's task is to determine whether the district

court's findings are supported by the record. *S.E.P.*, 744 N.W.2d at 385. We conclude that the evidence supports the district court's findings and its ultimate determination of palpable unfitness.

Thus, we conclude that the district court did not err by finding that C.P.S. is palpably unfit to be a parent. That conclusion is sufficient to satisfy the requirement of at least one statutory basis for termination. *See R.W.*, 678 N.W.2d at 55. In light of that conclusion, as well as the district court's finding that reasonable efforts have failed to correct the conditions that led to the children's out-of-home placement, we need not consider whether the district court erred by finding that C.P.S. neglected the duties of the parent-child relationship.

II. Best Interests

C.P.S. also argues that the district court erred by finding that termination of her parental rights to D.S. and E.S. is in the children's best interests.

"In terminating parental rights, the best interests of the child are the paramount consideration, and conflicts between the rights of the child and rights of the parents are resolved in favor of the child." *J.R.B.*, 805 N.W.2d at 902; *see also* Minn. Stat. § 260C.301, subd. 7. "In analyzing the best interests of the child, the court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see also* Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3). The district court "must consider a child's best interests and explain its rationale in its findings and conclusions." *In re Tanghe*, 672 N.W.2d 623, 626 (Minn.

App. 2003). We apply an abuse-of-discretion standard of review to a district court's determination that termination of parental rights is in a child's best interests. *J.R.B.*, 805 N.W.2d at 905.

The district court found that the children's "needs for stability, health considerations, and preferences" weigh in favor of terminating parental rights. The district court stated that it is important that the children receive care and guidance from parental figures and a safe and stable environment, "free from animal urine, animal feces, [and] overwhelming clutter." The district court further concluded that the children need someone to provide food and clothing for them, feed them, and support them in their educational endeavors. Furthermore, "[b]oth children need a caregiver who is mentally stable and capable of providing necessary supervision [and] who will protect them from unsafe people."

The evidence in the record supports the district court's finding. The psychologist testified that the bond between C.P.S. and the children is not particularly strong. In addition, the guardian *ad litem* testified that the attachment between C.P.S. and the children is unhealthy. More importantly, the county's witnesses testified that the children have improved and have thrived in foster care. The guardian *ad litem* testified that, before D.S. was placed in foster care, he was anxious, angry, and withdrawn, but now he is improving and showing "the benefits of the stability that he is experiencing." The guardian *ad litem* testified that E.S. has made an even greater transformation. Before she was placed in foster care, she was "intense and wild in her ways of trying to get attention in how she interacted

with her siblings, how she interacted with the animals," but now she is active and curious and is showing excellent progress in her speech.

Thus, the district court did not err by finding that termination of C.P.S.'s parental rights to D.S. and E.S. is in the children's best interests.

Affirmed.