STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1077

In the Matter of the Welfare of the Child of:
H. N. N., and T. D. J. P., Parents.

Filed December 11, 2017
Affirmed
Halbrooks, Judge

Olmsted County District Court
File No. 55-JV-17-913

Steven Murakami, Rochester, Minnesota (for respondent H.N.N.)

Michael D. Schatz, Donnelly Law Office, Rochester, Minnesota (for appellant T.D.J.P.)

Mark A. Ostrem, Olmsted County Attorney, Debra A. Groehler, Assistant County Attorney, Rochester, Minnesota (for respondent Olmsted County Community Services)

Jesse Buggs, Lanesboro, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

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

HALBROOKS, Judge

In this appeal from the termination of his parental rights, appellant challenges the district court's determination that he is palpably unfit to be a parent and that his child was neglected and in foster care. We affirm.

FACTS

Respondent-mother H.N.N. and appellant-father T.D.J.P. are the parents of J.P.A.P. (the child), who was born on January 9, 2015. In March 2016, respondent Olmsted County Community Services received a report from the Rochester Police Department that appellant had held mother in the apartment against her will for a few days. Police found mother covered in bruises. She reported that appellant had repeatedly assaulted and threatened her. Mother told the county that she and appellant used drugs together, that appellant had been violent toward her for most of their two-year relationship, and that her children were exposed to the violence. The county filed a child in need of protection or services (CHIPS) petition in early July 2016, and the district court found that the child was in need of protection or services on July 25.

The county contacted appellant and worked with him in a number of different ways, including advising him of the child's out-of-home placement, providing him with contact information, allowing visits with the child via interactive video while appellant was incarcerated, meeting with appellant in jail, and formulating a case plan with him. Although appellant sometimes communicated with the county and expressed a desire to spend time with his son, there were times when he did not contact the county despite being asked to do so. He also refused to sign the case plan that the county prepared for him. The county ceased reunification efforts between appellant and the child in December 2016.

In February 2017, the county petitioned for the termination of parental rights (TPR) of both parents. Mother signed an affidavit of involuntary termination of her parental rights. Appellant contested the petition, and the case proceeded to a court trial. Because

of a prior involuntary TPR in 2014 involving a different child, appellant was presumed palpably unfit to be a parent under Minn. Stat. § 260C.301, subd. 1(b)(4) (2016). Following trial, the district court concluded that (1) appellant did not rebut the presumption that he is palpably unfit to parent; (2) the child was neglected and in foster care, pursuant to Minn. Stat. § 260C.301, subd. 1(b)(8) (2016); and (3) termination of appellant's parental rights is in the child's best interests. This appeal follows.

D E C I S I O N

On appeal from a district court's decision to terminate parental rights, we review the district court's findings of the underlying or basic facts for clear error. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "[W]e review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *Id.*

Appellant argues that the district court erred in its determination that he failed to overcome the presumption that he is palpably unfit to be the child's parent. A district court's determination of whether a parent has rebutted a presumption of palpable unfitness created by Minn. Stat. § 260C.301, subd. 1(b)(4), is a finding of fact that, on appeal, is reviewed to determine whether it is supported by substantial evidence and is not clearly erroneous. *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 544 (Minn. App. 2009).

A district court may terminate parental rights if it finds that "a parent is palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4). "It is presumed that a parent is palpably unfit . . . upon a showing that the parent's parental rights to one or more other children were involuntarily terminated." *Id.* Here, it

is undisputed that appellant's rights to parent a different child were previously involuntarily terminated. Therefore, appellant had the burden to rebut the presumption of palpable unfitness. *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). To satisfy this burden "a parent must introduce evidence that would 'justify a finding of fact' that he or she is not palpably unfit." *Id.* (quoting Minn. R. Evid. 301, 1977 comm. cmt.).

Appellant contended at trial and now on appeal that he presented sufficient evidence to satisfy his burden of production. Appellant testified that he has taken steps to improve himself and his ability to parent, including completion of classes in domestic violence, parenting, and welding; participation in the Father Project; remaining drug-free since July 2016; completion of the Crossroads drug-recovery program; and attending NA/AA meetings once or twice a month.

The district court made detailed findings addressing appellant's efforts to satisfy his burden of production, recognizing the county's reasonable efforts to rehabilitate appellant, although such efforts were not required pursuant to Minn. Stat. § 260.012(a)(2) (2016) due to appellant's prior involuntary TPR. The district court found:

> 16. [The county] has made reasonable efforts to rehabilitate the parents and to reunify the child with them. Services offered to the family include the following: case management, foster care, child care, safety planning, family group conference referral, and visits at the Olmsted County Adult Detention Center. The services offered were appropriate, reasonable, available, and necessary for the parents to correct the conditions leading to the child's placement out of the home. . . .
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> . . . .

18. [Appellant] is currently incarcerated at MCF-Stillwater. He testified that his anticipated release date is June 11, 2018.[1] [Appellant] admitted that he is not able to care for his child right now, nor can he meet the child's basic needs of food, clothing, and shelter. . . .

19. [Appellant] testified that prior to March 2016, he was involved in his son's life on a daily basis when he was not in jail. [Appellant] testified that he was in jail for approximately six months while [mother] was pregnant with his child, and then another six months after his child was born. [Appellant] does not believe his parental rights should be terminated because he plans to take care of his child when he is released from prison. His plan upon release from prison was vague: "live with father in Minneapolis." He did not provide any details regarding the home, who lives in the home, or how he would provide for the day-to-day care of a child in a safe and nurturing environment.

. . . .

21. Mr. Gauthier [the child protection worker] testified that he also tried to work with [appellant] and engage him in services. Mr. Gauthier had concerns regarding [appellant's] ability to safely parent, including domestic violence, drug use, and untreated mental health. Mr. Gauthier spoke with [appellant] just before [he] was released from the Olmsted County Adult Detention Center ("ADC") in October 2016. Mr. Gauthier provided [appellant] a business card and indicated that [appellant] should call Mr. Gauthier to set up a meeting. [Appellant] never contacted Mr. Gauthier upon his release from the ADC. Mr. Gauthier called [appellant's] mother to see if she knew where [appellant] was, but she was unable to find him. Mr. Gauthier testified that he later found out [appellant] was taken into custody in Hennepin County following another incident in which [appellant] held [mother] against her will. This incident occurred while there was an active Domestic Abuse No Contact Order ("DANCO") between [appellant] and [mother].

[1] "Minnesota Department of Corrections Offender locator indicates that [appellant's] anticipated release date is August 6, 2018."

The district court concluded that appellant's circumstances were "largely the same as in 2014, when his parental rights to another child were terminated," and that he failed to introduce evidence that he could successfully parent his child. Based on our review of the record, the district court's findings are supported by substantial evidence and are not clearly erroneous.

Appellant also argues that the district court erred in its determination that termination of his parental rights is proper because the child was neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8). The statute states that a child who is "neglected and in foster care" is one:

> (1) who has been placed in foster care by court order; and
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> (2) whose parents' circumstances, condition, or conduct are such that the child cannot be returned to them; and
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> (3) whose parents, despite the availability of needed rehabilitative services, have failed to make reasonable efforts to adjust their circumstances, condition or conduct, or have willfully failed to meet reasonable expectations with regard to visiting the child or providing financial support for the child.

Minn. Stat. § 260C.007, subd. 24 (2016).

Appellant asserts that the record does not contain clear and convincing evidence that he willfully or deliberately failed with respect to his parental duties because his failures were the result of his incarcerations. While stating that a parent's incarceration cannot be the sole basis for terminating parental rights, the district court properly considered appellant's incarcerations in combination with other evidence supporting the TPR petition, citing *In re Child of Simon*, 662 N.W.2d 155, 162 (Minn. App. 2003). Here, the district

court's findings address the statutory criteria and are supported by substantial evidence. We therefore conclude that the district court acted within its discretion by terminating appellant's parental rights.

Affirmed.