STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0702

In the Matter of the Welfare of the Child of: P. S., Parent.

Filed October 15, 2018
Affirmed
Schellhas, Judge

Cottonwood County District Court
File No. 17-JV-18-4

Maryellen Suhrhoff, Muske, Suhrhoff & Piddle, Ltd., Windom, Minnesota (for appellant mother)

Nicholas A. Anderson, Cottonwood County Attorney, Windom, Minnesota (for respondent county)

Carma Nordahl, Sheldon, Iowa (guardian ad litem)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and T. Smith, Judge.

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

SCHELLHAS, Judge

Mother challenges the termination of her parental rights, arguing that the district court failed to consider alternatives to termination, and that termination of her parental rights is not in the child's best interests. We affirm.

FACTS

Appellant-mother P.S. gave birth to K.N. on January 24, 2018, at a Windom hospital. Until January 14, mother was in jail on a probation violation for failing to complete a chemical-dependency assessment and failing to complete a mandatory chemical-dependency program. K.N. tested positive for methamphetamine at the time of his birth. Mother "struggle[d]" to dress K.N. at the hospital without assistance. On January 25, 2018, Des Moines Valley Health and Human Services (DVHHS) petitioned for emergency protective care of K.N. and later to terminate mother's parental rights, based on a presumption of palpable unfitness.

Mother has six prior children. Mother's parental rights to five of the children have been terminated, voluntarily and involuntarily, and she does not care for the remaining child. Mother gave birth to J.C. in September 1999. She began using methamphetamine around 2002. From 2008 until 2015, J.C. was in and out of mother's care. In February 2015, mother voluntarily terminated her parental rights to J.C.

Mother gave birth to her next child, Z.S., in January 2005. Z.S. went to live with his biological father in 2006, before the birth of mother's third child. Although mother's rights to Z.S. have not been terminated, at the time of trial regarding K.N., mother had not seen Z.S. for a year or two.

Mother gave birth to J.S. on November 28, 2006. J.S. tested positive for methamphetamine at the time of his birth. As a result of mother's methamphetamine use and inadequate housing, J.S. was in and out of mother's care from 2008 to 2013. Mother's parental rights to J.S. were involuntarily terminated in August 2014.

Mother gave birth to Ja.S. in April 2008. During her pregnancy, mother was civilly committed because of her methamphetamine use. Ja.S. resided with mother beginning in early July 2008, after mother completed chemical-dependency treatment. Ja.S. was removed from mother's care in May 2010, when mother's relapse to methamphetamine use was discovered. Ja.S. was in and out of mother's care until late May 2013. Mother's parental rights to Ja.S. were involuntarily terminated in April 2014.

Mother gave birth to M.S. in September 2010. During her pregnancy, mother was again civilly committed because of her methamphetamine use. Mother completed inpatient treatment on August 28, 2010, entered a half-way house, but left after M.S.'s birth against treatment staff's advice without completing the program. M.S. was subsequently removed from mother's care, and her parental rights to M.S. were involuntarily terminated in August 2014.

Mother gave birth to P.S. in May 2016. She used methamphetamine during her pregnancy. P.S. was never in mother's care, but mother was provided an opportunity to work with protective services and to complete a chemical-dependency assessment. Mother did not follow through with services, and her parental rights to P.S. were voluntarily terminated in August 2017.

This appeal of the termination of mother's parental rights to K.N. follows.

D E C I S I O N

Sufficiency of evidence of mother's palpable unfitness

We begin by noting that mother, citing Minn. Stat. § 260C.201 (2016), argues that the district court erred "by failing to deny the petition and failing to enter a disposition consistent with a child in need of protection or services," and failing to entertain statutory options other than a termination of parental rights. Mother's argument lacks merit. "If, after a hearing, the court does *not* terminate parental rights but determines that the child is in need of protection or services . . . the court may find the child is in need of protection or services." Minn. Stat. § 260C.312(a) (2016) (emphasis added). The court may then enter a disposition under Minn. Stat. § 260C.201. *Id.* Here, because the district court found that clear and convincing evidence supports the termination of mother's rights, the alternative options in Minn. Stat. § 260C.312(a) are not applicable. Minnesota Statutes section 260C.312(a) applies only when the court does not terminate parental rights but finds that a child is in need of protection or services. The court therefore did not err by not considering options other than termination of parental rights.

"A natural parent is presumed to be suitable to be entrusted with the care of his child and it is in the best interest of a child to be in the custody of his natural parent." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014) (quotations omitted). But a presumption of palpable unfitness exists when a parent's parental rights have been involuntarily terminated in a previous proceeding. *Id*. "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." Minn.

Stat. § 260C.301, subd. 1(b)(4) (2016). The burden is on the parent to rebut the presumption by producing "only enough evidence to support a finding that the parent is suitable to be entrusted with the care of the children." *R.D.L.*, 853 N.W.2d at 137 (quotation omitted). Here, the district court determined that mother did not rebut the presumption, and mother does not challenge that determination on appeal.

Even if mother had rebutted the presumption of palpable unfitness, DVHHS met its burden of proving by clear and convincing evidence that mother is palpably unfit.

> [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. 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 . . . under Minnesota Statutes . . . or a similar law of another jurisdiction.

Minn. Stat. § 260C.301, subd. 1(b)(4); *In re Welfare of Child J.K.T.*, 814 N.W.2d 76, 91 (Minn. App. 2012) (quotation omitted). A social worker testified that both P.S., age twenty months, and K.N., age two months, were born positive for methamphetamine, and that nothing had changed in mother's circumstances since their births. Mother had not completed chemical-dependency treatment, and she had been in and out of jail since then.

This court reviews "the district court's findings of the underlying or basic facts for clear error, but . . . its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children*

of J.R.B., 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). The district court prepared careful and thorough findings that include a determination that mother's palpable unfitness existed at the time of trial and will continue for a prolonged period of time. Ample evidence reflects that mother has repeatedly rejected services and continually used methamphetamine. The record supports the court's finding that mother is palpably unfit. The court therefore did not abuse its discretion when it invoked this basis to terminate mother's parental rights.

Best interests of K.N.

The district court found that termination of mother's parental rights to K.N. is in K.N.'s best interests. Mother argues that K.N.'s best interests are not served by termination. In a termination proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd. 7 (2016). Even if there is a statutory ground for termination, the district court still needs to consider "whether termination is in the best interests of the children." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 57 (Minn. 2004). When analyzing the best interests of the children, "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." *J.R.B.*, 805 N.W.2d at 905 (quotation omitted). These competing interests may "include such things as a stable environment, health considerations and the child's preferences." *Id.* (quotation omitted). This court reviews the district court's termination decision for an abuse of discretion. *Id.*

Ample evidence supports the district court's finding that K.N. does not have a strong interest in preserving the parent-child relationship, and that his best interests are served by a termination of mother's parental rights. Nothing in the record supports mother's argument that her interest in preserving the parent-child relationship outweighs the child's competing need for safety, stability, and permanency.

Affirmed.