STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0930

In the Matter of the Welfare of the Child of: D. S. W., Parent.

Filed October 29, 2018
Affirmed
Schellhas, Judge

Isanti County District Court
File No. 30-JV-18-25

Carrie A. Doom, McKinnis & Doom, P.A., Cambridge, Minnesota (for appellant D.S.W.)

Jeffrey R. Edblad, Isanti County Attorney, Timothy C. Nelson, Assistant County Attorney, Cambridge, Minnesota (for respondent Isanti County Family Services)

Kari Seebach, Cambridge, Minnesota (guardian ad litem)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Kalitowski, 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's determination that she is palpably unfit to be party to the parent-child relationship is not supported by clear and convincing evidence. 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

Appellant-mother D.S.W. gave birth to D.W. in 2017, in Wauwatosa, Wisconsin. Prior to D.W.'s birth, mother's parental rights to three children were terminated involuntarily and to two children voluntarily. Reports from Wisconsin Child Protective Services (WCPS) state that mother's previous parental-rights terminations arose from her lack of care of the children, unstable mental health, and continued alcohol consumption and drug use.

While mother was pregnant with D.W., WCPS investigated and reported that mother "mentioned multiple times she has thought about leaving [Wisconsin] to avoid [the state] taking [the child]," that mother exhibited "polysubstance abuse of alcohol, heroin and crack cocaine," that mother had entered and quit chemical-dependency treatment multiple times, and that mother was not receiving prenatal care. Following D.W.'s birth, mother moved with the child to Minnesota to live with a friend.

On October 24, 2017, mother entered substance-abuse treatment in Mora, Minnesota. A psychiatric evaluation completed at the treatment facility states that mother presented with "a history of major depression, anxiety disorder, bipolar disorder, and schizoaffective disorder," a "significant history of sexual abuse," and substance use. On November 20, mother left the treatment facility "against staff advice . . . without having housing in place . . . to an unknown location."

On January 22, 2018, respondent Isanti County Family Services (ICFS) commenced a child-protection investigation after receiving a report concerning mother and D.W., found that D.W. was unsafe, and removed D.W. from mother's care. On January 25, ICFS filed

a petition to terminate mother's parental rights to D.W. based on the prior involuntary terminations of mother's parental rights. Mother appeared for the admit/deny hearing but left before it started, and the district court ordered a continuation of D.W.'s out-of-home placement. On February 7, the court appointed a guardian ad litem (GAL) for D.W.

On February 13, 2018, mother appeared with counsel and denied the petition to terminate parental rights (TPR). On April 25, the district court conducted a trial on the TPR petition. Mother appeared with counsel, and the parties stipulated to the court's receipt of numerous exhibits. The court also received the GAL's written recommendation. The following witnesses testified: mother; Lisa Willis, mother's friend; Derrek Bacon, mother's former neighbor; Ruby Bardwell, paternal grandmother of two of mother's children other than D.W.; Kari Seebach, GAL; Lynn Zierden, ICFS child-protection specialist; and Alicia Stenberg, ICFS social worker. The court took judicial notice of the prior terminations of mother's parental rights. The court terminated mother's parental rights, along with the parental rights of D.W.'s unknown father.

This appeal follows.

D E C I S I O N

"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 district court may involuntarily 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) (2016).

> [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.

Id. 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. 17, 2012). "[T]ermination of parental rights is always discretionary with the juvenile court." *R.D.L.*, 853 N.W.2d at 136.

The district court terminated mother's parental rights to D.W. after concluding that, although mother rebutted the statutory presumption of palpable unfitness, ICFS provided clear and convincing evidence that mother was palpably unfit to parent D.W., and that D.W.'s best interests were served by a termination of mother's parental rights. The evidence necessary to rebut a presumption of palpable unfitness need only "create a genuine issue of fact." *In re Welfare of J.A.K.*, 907 N.W.2d 241, 246 (Minn. App. 2018), *review denied* (Minn. Feb. 26, 2018). If a parent rebuts the presumption of palpable unfitness, the presumption "has no further function at trial," and the court shall "find the

existence or nonexistence of the alleged palpable unfitness upon all the evidence exactly as if there never had been a presumption at all." *Id.* (quotations omitted).

Mother argues that the county failed to provide clear and convincing evidence that she is palpably unfit to be a party to the parent-child relationship. When seeking to terminate parental rights for palpable unfitness, the petitioner 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." *In re Welfare Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008) (quotation omitted). Here, the district court based its decision on the WCPS reports, records of mother's prior parental-rights terminations, health records, law-enforcement reports, ICFS reports, and records of mother's visits with the child. The court's careful and thorough findings address mother's personal history, the visits between mother and D.W., the witnesses' testimony, and the court's credibility determinations. In addressing mother's palpable unfitness, the court notes mother's "chemical use history including relapse . . . inability to maintain sobriety," failure to seek treatment, lack of "insight into the severity of her chemical use issues and the danger that presents [to D.W.]," her daily contact with nonsober individuals, and "lack of insight into the effect [mother's] mental health needs have on her ability to parent."

Mother does not identify any erroneous findings, or how the district court otherwise erred. Rather, she focuses on findings that she argues do not support a determination of palpable unfitness. The district court found 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 denied substance-abuse and mental-health treatment services and continually used alcohol and other chemical substances. We conclude that the record amply supports the court's findings, and that the findings support a conclusion that mother is palpably unfit to be a party to the parent-child relationship with D.W. The district court therefore did not abuse its discretion when it terminated mother's parental rights to D.W. for palpable unfitness.

Affirmed.