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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1625
A18-1659

In the Matter of the Welfare of the Child of: J. M. G. and R. L. W., Parents

Filed February 19, 2019
Affirmed
Reilly, Judge

Chisago County District Court
File No. 13-JV-18-119

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Considered and decided by Rodenberg, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

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

REILLY, Judge

Appellant-parents challenge the district court's order terminating parental rights to a minor child. Because the record supports the district court's findings that a statutory ground for termination exists and termination is in the child's best interests, we affirm.

FACTS

Parents challenge a district court order terminating parental rights to a minor child born in 2010. Parents have a history of chemical dependency, mental health issues, domestic abuse, and housing and employment instability. The parental rights to their two oldest joint children were previously involuntarily terminated. In October 2017, Chisago County Health and Human Services (the county) received a report alleging educational neglect of a child. A county social worker visited the family at home to address these issues. Father was aggressive and stated that the social worker had no right to be at the home. Father eventually permitted the child to come to the door to allow the social worker to verify the child's safety. This interaction concerned the social worker, who was unable to interact with the child.

The social worker attempted to contact parents on the phone and at home on numerous occasions between October 2017 and April 2018 to address the county's ongoing concerns for the child's safety. The social worker was unable to locate the parents, and learned that the family regularly changed residences to live with different extended family members in three different Minnesota counties. In November 2017, the county filed a petition for protective supervision of the child in order to engage the family in services. The child was adjudicated in need of protection or services about two weeks later. In December, the district court granted the county's ex parte request for immediate custody and emergency protective care of the child based on concerns related to the child's safety, domestic abuse, and drug use in the home.

The county located the family in April 2018. The social worker visited the home with a police officer to remove the child. Parents denied that the child was at home and became upset and started yelling. Father made it clear that he would not cooperate with the officers attempting to remove the child from his custody. Police officers called for backup assistance and used mace and a Taser gun to gain control of father. Both parents were arrested. Police officers entered the home and found the child asleep in a nearby bedroom. The child was removed from the home and placed in foster care. Following removal, the county arranged for supervised phone calls between the parents and the child. Father made "inappropriate and harmful" comments to the child during his phone call, and mother missed several phone calls, causing the child distress.

In April 2018, the county petitioned to involuntarily terminate parental rights. Mother was permitted to have supervised visits with the child. Father was not permitted to be present at these visits. Mother was late to the first visit, and the second visit was cancelled when mother failed to appear. At the third visit, mother showed the child a video of father that "contained inappropriate promises about the child coming home." Mother was late to the fourth visit and exhibited behaviors which led the social worker to believe, based upon her experience and training, that mother was under the influence of illegal substances.

The district court held a four-day trial in July and August 2018. Parents acknowledged that their parental rights to two other joint children were previously involuntarily terminated. Following the trial, the district court issued an order terminating the parental rights of both father and mother. The district court found that parents did not

have safe and stable housing and "moved repeatedly" once the county attempted to engage the family in services. The child did not attend school during the 2017-2018 school year, and parents declined county services related to the child's special needs. The district court found that there were "recent unaddressed domestic violence issues" in the family, and unaddressed concerns related to parents' mental health and chemical abuse. The district court also found that parents had a history of refusing services offered by the county and avoided services aimed at helping the child. Based upon these factual findings, the court concluded that parents were palpably unfit to be a party to the parent and child relationship and were continuously refusing to comply with the duties required by the parent and child relationship, under Minn. Stat. § 260C.301, subds. 1(b)(2), (4) (2018). The district court also performed a best-interests analysis and determined that termination of parental rights was in the child's best interests.

Parents appeal the district court's termination decision.

D E C I S I O N

I. Standard of Review

The decision to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014). A reviewing court conducts a close inquiry into the evidence, but gives "considerable deference" to the district court's termination decision. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We will affirm the termination of parental rights if "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). The "best interests of the child" are the "paramount consideration" in a termination proceeding. Minn. Stat. § 260C.301, subd. 7 (2018). A decision that termination is in the child's best interests is reviewed for abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901-02 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

II. Statutory Ground for Termination

"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." *R.D.L.*, 853 N.W.2d at 136 (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).

> [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.

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." *Id.*

"This presumption is a rebuttable presumption." *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "The statutory presumption imposes on a parent the burden of going forward with evidence to rebut or

meet the presumption." *Id.* (quotations omitted). This presumption "does not shift to a parent the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast." *Id.* (quotation omitted). Instead, "the statutory presumption shifts to a parent a burden of production." *Id.* 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). "Whether a parent's evidence satisfies the burden of production must be determined on a case-by-case basis." *J.W.*, 807 N.W.2d at 446; *see also R.D.L.*, 853 N.W.2d at 137. In determining whether a parent's evidence rebuts the presumption that he or she is not palpably unfit, a court should credit and consider the evidence without weighing it against any contrary evidence. *See J.W.*, 807 N.W.2d at 446-47.

Father "concede[d] the previous TPR does create a statutory presumption of palpable unfitness" and failed to produce any evidence rebutting that presumption. The district court's finding that father failed to overcome the presumption of unfitness is supported by the record and is not clearly erroneous. The district court did not abuse its discretion by terminating father's parental rights to the child for palpable unfitness.

Mother argues that the district court erred when it concluded that she failed to rebut the presumption of palpable unfitness, and we agree. Mother presented testimony from a licensed social worker / psychologist who conducted a parenting evaluation of mother (the parenting evaluator). The parenting evaluator met with mother and the child on two occasions in April 2018. She was aware of mother's history of untreated mental illness

and chemical dependency, and recommended that mother meet with a therapist. The parenting evaluator testified that she expected mother and child could be fully reunified within six months. Given case law instructing that the presumption is "easily rebuttable," we determine that mother satisfactorily rebutted the statutory presumption of palpable unfitness and the district court erred by determining otherwise. *See R.D.L.*, 853 N.W.2d at 137; *see also J.A.K.*, 907 N.W.2d at 245.

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." *J.A.K.*, 907 N.W.2d at 246. (quotations omitted)*; see also J.W.*, 807 N.W.2d at 447 ("The burden of persuasion remains with the county to prove, by clear and convincing evidence, that specific conditions existing at the time of the hearing make [the parent] palpably unfit to be a parent." (quotation omitted)). Here, although mother rebutted the statutory presumption of palpable unfitness, the county provided clear and convincing evidence that she was palpably unfit to parent the child. The district court based its decision on evidence presented by the county, records of the prior involuntary-termination decision, and witness testimony, and determined that mother

> has not been willing to use services or seek appropriate treatment, has refused to actively engage in the process . . . and has continued to fail to seek the help she needs to properly parent the child. Additionally, [mother] has demonstrated her willingness to remain in a relationship with [father] and put his needs above their child.

The district court also considered the present conditions of the parents and concluded that mother was unable for the reasonably foreseeable future to care appropriately for the child due to her unaddressed mental health and chemical dependency issues and her inability to place her child's needs above her own.

In reaching this determination, the district court made credibility determinations regarding witness testimony. With respect to the parenting evaluator, the district court accorded her testimony "less weight" because it was "significantly tied to [mother's] self-reporting assertions" regarding chemical use and efforts to find safe and stable housing and employment. The district court also noted that the parenting evaluator did not conduct a mental health evaluation on mother, did not review information related to father, did not speak with the guardian ad litem, and did not contact collateral sources for mother's parenting assessment. While the district court erred by weighing the parenting evaluator's testimony against other evidence at the first step in its analysis, we nevertheless defer to the district court's opportunity to observe witnesses and assess their credibility in reaching the ultimate conclusion. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 94 (Minn. App. 2008) (reviewing credibility determinations).

The district court's determination that mother was unable to care for the child for the reasonably foreseeable future is supported by testimony in the record. The guardian ad litem submitted a letter to the court recommending termination of parental rights of both parents. After hearing the testimony from mother's parenting evaluator, the guardian ad litem agreed that mother might be able to parent the child in the future if she was willing to get appropriate services for herself and the child, comply with the recommendations of

therapists and professionals, and put the needs of the child above those of herself and father. But the guardian testified that mother has not shown "any involvement" in county services "since this all started." The guardian testified that parents "have not been cooperative," and that mother "wasn't necessarily willing to do what would have been asked of her" to get help for her or for the child. The guardian also specifically noted that mother was "a different person" around father, and that he had a "negative impact on her and the choices that she makes." The district court found the guardian's testimony "credible" and afforded it "great weight," and determined that mother was unable to appropriately care for the child because she "has refused all services, has broken the visitation rules on multiple occasions by inserting [father] into the visits, and has not complied with the court orders." We do not disturb these credibility determinations, which are amply supported by the record. *See D.F.*, 752 N.W.2d at 94.

Mother argues that the district court erred by determining that the county made reasonable efforts to reunify the family. The palpable-unfitness statutory basis does not explicitly reference a requirement that the county make reasonable efforts to reunite a parent with his or her child. Minn. Stat. § 260C.301, subd. 1(b)(4). Moreover, "'reasonable efforts,' by definition, does not include efforts that would be futile." *R.W.*, 678 N.W.2d at 56. The record reveals that the county repeatedly attempted to work with the parents to provide services to the family. Parents continued to move from county to county, and social workers were unable to locate the family. On one occasion, the parents denied that the child was inside the house, when in fact he was. When police officers attempted to enter the house to remove the child, father engaged in a physical confrontation with the

officers. The district court found that "parents both continued to decline and avoid services . . . by refusing services offered by [the county] to address the child's educational neglect and provide the parents with services that are in the child's best interests." Any reunification efforts were futile, given parents' unwillingness to cooperate with the county. We therefore see no error in the district court's reasonable-efforts determination.

We conclude that the record, taken as a whole, amply supports the district court's findings, and the findings support a conclusion that the county proved by clear and convincing evidence that both father and mother are palpably unfit to be a party to the parent and child relationship under Minn. Stat. § 260C.301, subd. 1(b)(4).[1]

III. Best-Interests Determination

We will affirm a termination decision if "at least one statutory ground alleged in the petition is supported by clear and convincing evidence and termination of parental rights is in the child's best interests." *In re the Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008) (citations omitted). If a statutory basis for termination is present, the child's best interests are the paramount consideration in a termination proceeding. Minn. Stat. § 260C.301, subd. 7 (2018); *see* Minn. Stat. § 260C.001, subd. 2(a) (2018). A best-interests' analysis requires consideration of the child and parent's interests in preserving

[1] The district court also determined that the county proved by clear and convincing evidence that parents failed to comply with their parental duties under Minn. Stat. § 260C.301, subd. 1(b)(2). Because we affirm termination of parental rights on palpable-unfitness grounds, we do not address this determination. *See R.W.*, 678 N.W.2d at 55 (noting that a termination decision 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).

the parent-child relationship and of any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *see also J.R.B.*, 805 N.W.2d at 905 ("Competing interests [of the child] include such things as a stable environment, health considerations[,] and the child's preferences." (quotation omitted)). We review a best-interests determination for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

The district court did not abuse its discretion here because it carefully weighed the competing interests and the record supports the court's best-interests findings. The district court acknowledged that the child has an interest in maintaining the parent-child relationship because "he loves his parents and enjoys their company," and has a bond with mother "established through the approximately seven years [mother] raised her child." But the district court also noted that the child has "an overriding interest in achieving a safe and stable permanent home at the earliest possible time," and "an overriding interest in developing a stable and positive relationship with a parent who can meet his basic and special needs." The district court concluded that although parents love the child, they are incapable of meeting the child's needs now as well as in the reasonably foreseeable future. Weighing all the factors together, the district court concluded that

> the child's competing interests of stability, stable housing, the need for parents to provide for the child's development and mental health needs, the need for parents to support the child's educational development, and the need for the child to have healthy parents who put the needs of the child before their own outweigh the interests of the child in maintaining the parent-child relationship with his parents and [parents'] interests in maintaining a parenting relationship with the child.

Mother argues that the district court did not weigh the competing interests correctly because the child suffered stress as a result of the separation. Mother also argues that the district court improperly considered the child's diagnostic assessment. The child was referred for mental-health services to address concerns about recent traumatic events, including neglect, exposure to drug use, and being a witness to domestic violence. The diagnostic assessment indicated that the child "struggled with the adjustment to the foster home for about two weeks," but has since become "more comfortable" and has "started having more positive moods." The assessor noted that the child "experienced significant risks while living with his parents, including witnessing domestic violence and drug use, neglect, and exposure to drug use." While the child "shows distress around the separation from his caregivers," the assessor noted that he is "currently in a safe foster home placement where his basic physical and emotional needs are being met."

The district court's best-interests findings are supported by the record, given parents' history of neglect and the child's exposure to drug use and domestic violence. *See Matter of R.M.M.*, 316 N.W.2d 538, 542 (Minn. 1982) (affirming termination where parent's inability to care for child "threatens the mental and physical health" of child); *see also In re Welfare of A.J.C.*, 556 N.W.2d 616, 622 (Minn. App. 1996) (affirming termination of parental rights where "in spite of [mother's] love for her children, [she] has failed to comply with her parental duties" due to personal problems), *review denied* (Minn. Mar. 1997). Terminating parents' parental rights will allow the child to remain in foster care, where he is "respond[ing] well to the routine and structure in the foster home."

Because at least one statutory ground for termination of parental rights is supported by clear and convincing evidence and termination is in the child's best interests, we determine that the termination of parental rights was proper. Thus, the district court did not abuse its discretion in terminating parents' parental rights to the child.

Affirmed.