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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0495

In the Matter of the Welfare of the Child of: A. F. P., Parent.

Filed September 30, 2019
Affirmed
Reilly, Judge

Pennington County District Court
File No. 57-JV-17-787

A.F.P., Thief River Falls, Minnesota (pro se appellant)

Seamus Duffy, Pennington County Attorney, Stephen R. Moeller, Assistant County Attorney, Thief River Falls, Minnesota (for respondent)

Denae Bayne, Thief River Falls, Minnesota (guardian ad litem)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

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

FACTS

Appellant-mother challenges a district court order terminating her parental rights to a minor child born in October 2011. Father is not a party to this appeal.[1]

On September 26, 2017, Pennington County Human Services (the county) received a report that a child with special needs was potentially in need of protection or services. County Sheriff's Deputy Melissa Larson, child protection investigator Katie Stusynski, and county social worker Alia Cota performed a welfare check at the home. Larson described the home as "very dirty" and "unlivable for the child," noting that there were "piles upon piles" of items preventing people from walking in the home. Larson noted that the child's play area was a "dog kennel/fenced in area covered in feces from the dog." Larson also saw a known drug user with an outstanding arrest warrant sleeping on the couch. Stusynski described the house as "very dark" and "cluttered," and was concerned about the child's living conditions and his safety in the home. Cota described the home as "very messy and very dirty," and noted that the kitchen was in "disarray" because "[t]he counters were full of garbage" and overflowed with dirty dishes. Larson, Stusynski, and Cota were concerned for the child's safety and removed him from the home.

The next day, the county filed a petition alleging that the child was in need of protection or services [CHIPS]. On September 28, the district court held an emergency protective care hearing and issued findings of fact and an order, finding that it was not in the child's best interest to remain in the home due to the "risk posed to the child's safety

[1] In January 2019, the district court transferred permanent legal and physical custody of the child to father.

and security." The district court granted the county temporary custody of the child for out-of-home placement in foster care.

Prior to the CHIPS adjudication, the county filed a permanency petition seeking to involuntarily terminate mother's parental rights to the child because her custodial rights to three other children were previously involuntarily transferred. The petition alleged that (1) the child was in need of special care that mother was unwilling or unable to provide; (2) the child was without proper parental care because of an emotional, mental, or physical disability or immaturity on the part of the mother; (3) the child's environment was dangerous; and (4) mother previously had an involuntary custodial transfer of three other children.

The district court held a trial on the county's petition to terminate mother's parental rights, and heard testimony from Deputy Larson, Stusynski, and Cota regarding the welfare check conducted at the home on September 26. The court also heard testimony from the child's foster parent, licensed psychologist Dr. Helen Achilleoudes, mother's ex-boyfriend, the family's case manager, the Guardian Ad Litem (the GAL), mother, and mother's personal care attendant.

The foster parent testified that she first came into contact with the child through her work as a patient care assistant (PCA) for the child when he was four years old. She testified that the child "needed to be assisted in all areas," including washing his hands, using the bathroom, and participating in day-to-day activities. During her work with the child, the foster parent became concerned about the child's safety and well-being in mother's household. The foster parent observed drug paraphernalia around the house,

noticed the smell of marijuana in the home, saw somebody sleeping in the dog bed on the floor in the kitchen, and saw the child eating out of the garbage. The foster parent testified that since the child was placed in her care, he had stopped swearing, began to speak in short sentences, began to eat "regular table food," reached a healthier body weight, learned to sit at the table and use utensils, began to brush his teeth and receive dental care, began bathing regularly without fear of the bathtub, and started kindergarten.

Dr. Achilleoudes testified that she performed neuropsychological evaluations of the child in 2016 and in 2018. The child failed to make any progress during those two years, and regressed in certain areas. Achilleoudes testified that she expected the child to make progress over a two-year time period, and was concerned that he had not made progress. However, Achilleoudes testified that the child made qualitative progress under the care of his foster parent, and stressed the importance of a safe, secure, stable, structured, and organized home for the child.

Mother's ex-boyfriend testified that he dated mother from 2015 to 2017 and lived in the home with mother and the child. He testified that he became concerned about the condition of the home and the child's well-being, noting that there were "bed bugs," and "mess[es]" in the home, that "drug addicts" lived in the home and in tents in the backyard, that the child had bad hygiene and did not bathe regularly, and he had smoked marijuana in the home with mother.

Erin Johnson, a county child protection worker who served as the child's case manager, testified that the child made progress after being removed from mother's home. Johnson testified that she attempted to set up weekly parenting time visits with mother.

The county required mother to abstain from illegal-drug use in order to exercise parenting time with the child. However, mother tested positive for non-prescription drugs and the parenting-time visits stopped.

The GAL testified that she worked with the child since September 2017, and the amount of progress he made since being removed from his mother's care was "unbelievable." The GAL testified that the child made "leaps and bounds" in speaking, eating, bringing his behavior under control, and learning to eat "regular food at the table." The child is also "no longer afraid of people," knows "how to play," and began to interact with others. The GAL testified that the child began "blossoming in a way that is just unbelievable for where we started a year ago to a child that needed to be taught how to feed at an infant stage." The GAL supported terminating mother's parental rights.

Mother testified on her own behalf at trial. Mother acknowledged that the family "struggled" with the child's special needs, mother's illness, finances, and day-to-day activities. Mother acknowledged that three of her older children were involuntarily removed from her care, and admitted that she struggled with drug addiction. Mother stated that it was not safe for the child to be in her care. Mother's PCA also testified on mother's behalf at trial. The PCA testified that she provided home care for mother and helped mother with her "sores," her medication, and her day-to-day activities.

On September 28, 2018, the district court issued an order terminating mother's parental rights. The district court determined that the county satisfied its burden of proving by clear and convincing evidence that mother's parental rights should be terminated because she failed to comply with the duties imposed upon her by the parent-and-child

relationship and was palpably unfit to be a party to the parent-and-child relationship. However, the district court did not make a finding that termination would be in the child's best interests. Mother appealed on the ground that the district court erred by failing to make specific findings that termination of her parental rights was in the child's best interest. This court agreed and remanded the case to the district court for best-interests findings. *See In re Welfare of Child of A.F.P.*, A18-1676 (Minn. App. Feb. 26, 2019) (order op.).

The district court issued an amended order on March 6, 2019. The district court determined that the county met its burden of proving by clear and convincing evidence that mother's parental rights should be terminated because she is presumed to be palpably unfit under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018), and "[t]he evidence and testimony presented at trial does not rebut this presumption." The court noted that mother acknowledged during her own testimony that it was not "safe" for her to be alone with the child. The district court concluded that the county proved mother was palpably unfit by clear and convincing evidence. The district court further concluded that mother "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child relationship," and that it was in the child's best interests for mother's parental rights to be terminated. The district court also made specific best-interests findings. The court found the testimony presented by the county's witnesses credible, and based on that testimony concluded, "it is in [the child's] best interests for [mother's] parental rights to be terminated." Mother appeals.

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). As a reviewing court, we conduct a close inquiry into the evidence but give "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). The district court's decision to terminate parental rights will be affirmed 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). If a statutory basis for terminating parental rights is ruled to exist, the "best interests of the child" are the "paramount consideration" in a termination proceeding. Minn. Stat. § 260C.301, subd. 7 (2018). We review the district court's decision that termination is in the child's best interests for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012).

II. Clear and Convincing Evidence Supports the District Court's Determination that a Statutory Basis Exists to Involuntarily Terminate Mother's Parental Rights

"Typically, the natural parent is presumed to be fit and suitable to be entrusted with the care of his or her child." *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003). However, parental rights may be involuntarily terminated if the 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 presumed 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 or that the parent's custodial rights to another child have been involuntarily transferred." *Id.* But this is a rebuttable presumption and "imposes on a parent the burden of going forward with evidence to rebut or meet the presumption." *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011) (quotation omitted). This rebuttable 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). "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. In determining whether a parent's evidence rebuts the presumption that the parent is not palpably unfit, a court should credit and consider the evidence without weighing it against any contrary evidence. *See id.* 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)).

Because mother's custodial rights to three other children were involuntarily transferred, the district court determined that the statutory presumption of unfitness applied. The district court concluded that mother failed to rebut the presumption based on the evidence and the witness testimony presented. Mother acknowledged in her own testimony that she struggled with drug addiction and that it was not safe for the child to be in her care. Although the statutory presumption of unfitness is "easily rebuttable," mother failed to rebut the statutory presumption of palpable unfitness here. *R.D.L.*, 853 N.W.2d at 137; *see also J.A.K.*, 907 N.W.2d at 245.

The county provided clear and convincing evidence that mother was palpably unfit to be a party to the parent-and-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(4). *See J.W.*, 807 N.W.2d at 447 (noting that palpable unfitness must be established by clear and convincing evidence). Mother acknowledged that her custodial rights to her other children were involuntary transferred. The court also determined that mother failed to provide for the "structure and care" of this special-needs child, that the condition of the home was of "great concern due to its dirty condition and habitation by drug users," and that mother testified that it was not "safe" for her to be alone with the child. In reaching this decision, the district court made credibility determinations regarding witness testimony. The county's witnesses testified about the dirty and unsafe living conditions of the home, and the foster parent and case worker testified that the child made significant progress once he was removed from mother's care. The court found the testimony presented by the county's witnesses credible, and we defer to the district court's opportunity to observe the witnesses and assess their credibility. *See In re Welfare of*

Children of D.F., 752 N.W.2d 88, 94 (Minn. App. 2008) (reviewing credibility determinations).

The record, taken as a whole, amply supports the district court's factual findings, and the findings support a conclusion that the county proved by clear and convincing evidence that mother is palpably unfit to be a party to the parent-and-child relationship under Minn. Stat. § 260C.301, subd. 1(b)(4). Accordingly, we determine that the district court did not abuse its discretion by finding that mother is a palpably unfit parent and that clear and convincing evidence supports the termination of her parental rights on that ground.[2]

III. Termination of Mother's Parental Rights Is in the Child's Best Interests

This court will affirm a district court's decision to terminate parental rights 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) (citation omitted). Even 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; *see* Minn. Stat. § 260C.001, subd. 2(a) (2018). This analysis requires consideration of the child and

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[2] The district court also concluded that clear and convincing evidence supported the termination of mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018). In light of our conclusion that clear and convincing evidence supports termination of mother's parental rights under subdivision 1(b)(4), we need not address the other statutory ground for termination found by the court. *See In re Welfare of Children of R.W.*, 678 N.W.2d at 55 & n.2 (Minn. 2004) (recognizing that only one statutory ground needs to be proven to support termination of parental rights).

parent's interests in preserving the parent-and-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 district court's best-interests determination for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

Here, the district court weighed the competing interests of the mother and child. The court found that the mother could not provide a safe and structured environment for the child, who has autism and requires special care. Mother's failure to care for the child led to a regression of his autism. The court found that mother allowed other individuals to use drugs in her home, that the home contained drug paraphernalia and smelled of marijuana, and that mother tested positive for non-prescription drugs. The court also found that the child's best interests were not served by living in mother's home because the home was dirty and he had poor hygiene and nutrition. The court found that since being removed from mother's home, the child had learned to bathe, eat, speak, sleep on a regular routine, and interact with other children. The district court's best-interests findings are supported by the record.

In sum, 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 district court order terminating mother's parental rights was proper. We therefore conclude that the district court did not abuse its discretion by terminating mother's parental rights.

IV. Mother Is Not Entitled to Relief on her Other Arguments

a. Mother's Constitutional Arguments Are Forfeited

Mother argues that her constitutional rights were violated because (1) county employees entered her home and removed the child from her care, (2) the district court placed the child in foster care, and (3) county employees removed the child from mother's home and initially placed him in foster care, rather than in the care of his father. Mother did not raise these issues to the district court and an appellate court will not consider matters not argued to and considered by the district court. *See In re Welfare of M.H.*, 595 N.W.2d 223, 229 (Minn. App. 1999) (noting that, "[e]ven in the context of termination of parental rights, failure to raise constitutional issues in the district court precludes the issues from being raised on appeal"); *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (refusing to consider constitutional issue raised for the first time on appeal from termination of parental rights). Mother forfeited her constitutional arguments by raising them for the first time on appeal.

b. The Record Supports the Court's Palpable-Unfitness Determination

Mother argues that (1) the county interfered in her child-rearing decisions regarding the child's medical and schooling needs, and (2) the actions of the county social-service workers deprived her of her right to parent her child. We interpret these arguments as a challenge to the district court's palpable-unfitness determination. While a natural parent is presumed to be suitable to be entrusted with the care of her child, *R.D.L.*, 853 N.W.2d at 136, parental rights may be involuntarily terminated if the parent is "palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4).

Minnesota courts recognize the fundamental right of parents to enjoy the custody and companionship of their children, but parental rights are not absolute and should not be enforced to the detriment of the child's welfare and happiness. *In re Welfare of Rosenbloom*, 266 N.W.2d 888, 889 (Minn. 1978); *In re P.T.*, 657 N.W.2d 577, 583 (Minn. App. 2003). The fundamental right of parents to enjoy the custody and companionship of their children is subject to the state's compelling interest in protecting children from abuse and neglect. *P.T.*, 657 N.W.2d at 589. The district court determined that the state met its burden of establishing, by clear and convincing evidence, that mother was palpably unfit to be a party to the parent-and-child relationship and that termination of her parental rights was in the child's best interest. As discussed earlier, the record supports the court's decision.

c. The County Was Not Required to Reunify the Family

Mother argues that the county failed to make reasonable efforts to reunify the family.[3] The petition alleged that mother was palpably unfit to be a party to the parent-and-child relationship because her custodial rights to three other children were involuntarily transferred. Accordingly, the county was not required to provide reasonable efforts to reunify the family. *See In re Welfare of D.L.R.D.*, 656 N.W.2d at 250 ("[U]pon a district court's determination that a person's parental rights to another child previously have been terminated involuntarily, reasonable efforts for rehabilitation and reunification are not required."); *see also* Minn. Stat. § 260.012(a)(2) (2018).

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[3] And, in any event, father has custody of the child and is raising him.

d. The Foster Care Sibling Bill of Rights Does Not Apply

Mother argues that the county failed to preserve the relationship between the child and his siblings. Siblings placed in foster care have the right to be placed together in foster care homes, when possible and when it is in the best interest of each sibling, in order to sustain family relationships. Minn. Stat. § 260C.008, subd. 1 (2018). Here, while the child has at least three older siblings, none of those siblings were living in mother's home when he was placed in foster care. This section was established for "the benefit of siblings in foster care." *Id.*, subd. 2. Because the child did not have other siblings living in foster care when he was removed from the home, this section is inapplicable.

e. Mother Has Not Demonstrated Ineffective Assistance of Counsel

Mother claims that her attorney was ineffective. An aggrieved party must establish that "counsel's representation fell below an objective standard of reasonableness" and "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 686, 693, 104 S. Ct. 2052, 2064, 2068 (1984). Under *Strickland*, mother bears the burden of establishing ineffective assistance of counsel by a preponderance of the evidence. *Id.* Mother failed to establish either prong here. Mother did not identify any particular instances of misconduct, nor did she cite to relevant caselaw or explain how the outcome of the proceeding would have been different absent her attorney's alleged errors.

f. Mother Has Not Demonstrated Malevolence or Bias

Mother argues that (1) there was "a very clear theme of malevolence throughout the actions and reports in this case," and (2) the judge was biased against her. Mother does not cite to any caselaw in support of these arguments, and the record as a whole does not support her claims. To the contrary, the record shows that the court considered the testimony of the witnesses carefully, reviewed all of the evidence presented, and determined that clear and convincing evidence supported termination of her parental rights. While mother is dissatisfied with the adverse rulings against her, Minnesota law is clear that adverse rulings do not constitute an affirmative showing of prejudice. *See, e.g.*, *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).

g. We Defer to the District Court's Credibility Determinations

Mother challenges the district court's determination that mother used drugs in her home, allowed other people to use drugs in her home in front of the child, and allowed drug-users to sleep in her home. Multiple witnesses testified that mother abused drugs and allowed drug-use in her home, and mother tested positive for using non-prescription drugs. The district court found these witnesses credible, and we defer to the court's opportunity to observe witnesses and assess their credibility. *See In re Welfare of Children of D.F.*, 752 N.W.2d at 94.

Mother also argues that the district court's factual findings are based on "misunderstandings," and she offers alternative explanations for the evidence presented. A careful review of the entire evidentiary record supports the district court's factual findings, and the factual findings support the court's legal conclusions. This court's role

on appeal is not to reweigh the evidence and question the district court's credibility determinations. And while we conduct a close inquiry into the evidence, we also give "considerable deference" to the district court's termination decision. *In re Welfare of Children of S.E.P.*, 744 N.W.2d at 385. The record supports the district court's termination decision.

h. Mother's Unsupported Arguments Are Forfeited

Mother argues that she is entitled to reversal of the district court's order because (1) the district court violated her habeas corpus rights, (2) the county withheld evidence, (3) the court reviewed evidence from mother's previous court filings, (4) the county failed to demonstrate "egregious harm," and (5) mother is the child's biological parent. Mother failed to adequately support these arguments with citation to relevant caselaw or to the record. We therefore determine that mother waived these issues by failing to present any argument or cite to supporting authority. *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) ("A party who inadequately briefs an argument waives that argument.").

Affirmed.