STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0902

In re the Matter of the Welfare of the Child of:
J. B.-M. and A. A., Parents.

Filed December 16, 2019
Affirmed
Cochran, Judge

Nobles County District Court
File No. 53-JV-19-10

Travis J. Smith, Kayla M. Johnson, Smith & Johnson, Slayton, Minnesota (for appellants J.B.-M. and A.A.)

Joseph M. Sanow, Nobles County Attorney, Braden M. Hoefert, Assistant County Attorney, Worthington, Minnesota (for respondent Nobles County Community Services Agency)

Angie Willers, Worthington, Minnesota (guardian ad litem)

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

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

COCHRAN, Judge

Appellant-parents challenge the district court's order terminating their parental rights to their newborn child. Appellants argue that the district court erred by concluding that they failed to rebut the statutory presumption that they are palpably unfit to be parties to the parent-child relationship. The statutory presumption applies because appellants previously

had their parental rights terminated in a proceeding involving other children. Because the district court did not err when it concluded that appellants failed to rebut the statutory presumption, we affirm.

FACTS

Appellants J.B.-M. (mother) and A.A. (father)[1] have been in a relationship since 2009. The parties have a daughter, Am.A., born in March 2013, and mother has a son from a previous relationship—Y.B., born in February 2008.

In July 2017, respondent Nobles County Community Services Agency (county) filed a petition under Minn. Stat. § 260C.301, subd. 1(b)(4), (5) (2016), to terminate parents' parental rights to Am.A., and mother's parental rights to Y.B. The district court granted the petition in December 2017, finding that the children were subject to a "pattern of abuse" while in parents' care, which included the children being hit by belts and phone cords that sometimes left marks on the children. The district court also found that the county had established a case plan for parents, which included anger management programming and domestic violence evaluations and treatment, but that parents failed to meaningfully participate in the case plan. The district court concluded that the county proved by clear and convincing evidence that parents were palpably unfit to be parties to the parent-child relationship and that reasonable efforts by the county under the direction of the court failed to correct the conditions leading to the out-of-home placement of Am.A. and Y.B.

[1] Mother and father will collectively be referred to as "parents."

In January 2019, parents had another child, Ad.A. (the child), who is the subject of these proceedings. The child was removed from the home six days after his birth, and a petition to terminate parents' parental rights to the child was filed later that day. The petition alleged that under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018), parents are presumed to be palpably unfit to parent the child due to a prior involuntary termination of parental rights (TPR) determination, and that termination of parents' parental rights is in the best interests of the child.

At trial, evidence was presented that shortly after the child was removed from the home, law enforcement was dispatched to parents' home because mother was suicidal. The officer who responded to the call testified that upon his arrival at parents' home, he observed mother with a knife in her right hand and a cut on her left wrist. The officer also testified that he responded to a second incident involving mother in March 2019. According to the officer, mother was sitting on a chair with a rope around her neck that was tied to the top of a staircase. Mother was also holding a butcher knife and the gas stove was turned on. Mother was subsequently transported to the hospital and was later determined to be mentally ill. Although mother was present at trial, she did not testify.

Father testified that he and mother provided the appropriate care for the newborn child, and that after the child was removed from the home, they regularly exercised their visitation with the child. Father also testified that he recently attended two therapy sessions and has been reading books on parenting. He further testified that he now understands there are significant differences in attitudes between his home country of El Salvador and the United States related to physical discipline and that he has learned that physical

discipline is not necessary. And father testified that since the last TPR proceeding, he and mother have taken an "oath" not to spank their children.

On cross-examination, father denied ever hitting Am.A. or Y.B. with belts and phone cords. And when asked what parenting techniques he had used with Am.A. and Y.B. that he now thinks are inappropriate, father answered only, "[t]o take away the television for one month and the tablet for one month."

The district court concluded that under Minn. Stat. § 260C.301, subd. 1(b)(4), parents are presumed to be palpably unfit to be parties to the parent-child relationship because of the termination of parents' parental rights to Am.A., and the termination of mother's parental rights to Y.B., in the prior proceeding. The district court then determined that parents "have not satisfied their burden of production to rebut the statutory presumption of palpable unfitness." The district court also determined that the county has proven "by clear and convincing evidence that termination of [parents'] parental rights [to their newborn child] would be in the child's best interests." The district court, therefore, granted the county's petition to terminate parents' parental rights to the child. This appeal follows.

D E C I S I O N

Parents challenge the district court's termination of their parental rights to the child. Involuntary termination of parental rights is only appropriate where there is clear and convincing evidence that a statutory ground for termination exists and termination is in the child's best interests. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). We review a district court's "termination of parental rights to determine whether the district

court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). But a district court's "ultimate determination" to terminate a parent's parental rights is reviewed 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. 6, 2012).

"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). But 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 to be palpably unfit to parent "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.*

The statutory presumption is a rebuttable presumption that shifts the burden of production to the parent. *In re Welfare of Child of J.A.K.*, 907 N.W.2d 241, 245-46 (Minn. App. 2018), *review denied* (Minn. Feb. 26, 2018). The parent must produce evidence that could support a finding that "the parent is suitable to be entrusted with the care" of the child. *R.D.L.*, 853 N.W.2d at 137 (quotation omitted). If the parent introduces such evidence, then the "presumption is rebutted and has no further function at the trial." *J.A.K.*, 907 N.W.2d at 246 (quotation omitted). This court applies a de novo standard of review to the district court's determination as to whether the parent presented evidence sufficient to rebut the statutory presumption. *Id.*

Parents argue that the district court erred by (1) considering "the underlying facts of the previous termination" and (2) concluding that parents failed to rebut the statutory presumption of unfitness.

I. The district court did not err by considering the grounds for the previous termination in determining whether parents rebutted the statutory presumption.

Parents' parental rights were terminated under Minn. Stat. § 260C.301, subd. 1(b)(4). That statute provides that parental rights may be terminated based on a finding

> that 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 . . . .

Minn. Stat. § 260C.301, subd. 1(b)(4).

Parents argue that the district court erred by considering the "underlying facts of the previous termination to determine whether [parents] had rebutted the statutory presumption." To support their claim, parents refer to the language contained in the first part of section 260C.301, subdivision 1(b)(4), that "speaks exclusively of 'the' child and 'the' parent and child relationship." Parents claim that because the statute refers only to "the" child and to "the" parent-child relationship, the "evidence produced by a parent to rebut the presumption of palpable unfitness need only concern [the parent's] conduct

before *that* child," and the parents' "relationship" with that child." And parents contend that "[e]vidence of conditions relating to *other* children, . . . specifically the children who were the subjects of the previous termination, is irrelevant." We disagree.

The first part of Minn. Stat. § 260C.301, subd. 1(b)(4), contemplates that parental rights may be terminated for palpable unfitness. The second sentence then provides that it is presumed that a parent is palpably unfit if that parent's parental rights to one or more children were previously terminated. *Id.* The presumption of palpable unfitness stems from the specific underlying concern related to the previous termination proceeding. But that presumption can be rebutted. *J.A.K.*, 907 N.W.2d at 245-46 (indicating that the statutory presumption under Minn. Stat. § 260C.301, subd. 1(b)(4), is a rebuttable presumption). To rebut the presumption of palpable unfitness, a parent must produce evidence that could support a finding that the parent is "suitable to be entrusted with the care" of the child. *R.D.L.*, 853 N.W.2d at 137 (quotation omitted). Thus, in order to rebut the presumption of palpable unfitness, evidence of the previous termination is relevant and necessary to determine whether the parent is now fit to be entrusted with the care of the child because he or she has addressed the condition or conditions that led to the previous termination. *See J.A.K.*, 907 N.W.2d at 246-48 (examining the grounds supporting prior termination of mother's parental rights in determining whether the mother rebutted the presumption of palpable unfitness).

Here, parents' parental rights were previously terminated under Minn. Stat. § 260C.301, subd. 1(b)(4), after the district court determined that parents were palpably unfit to be parties to the parent-child relationship due to a "pattern of abuse" of

the children by both parents. Because of the prior involuntary termination, parents were presumed to be palpably unfit when the child was born. In order to rebut this presumption, parents were required to produce evidence to support a finding that they were suitable to be entrusted with the care of the child. Without consideration of the previous termination proceeding, it would be impossible for the district court to make a valid determination as to whether parents have addressed the underlying concern of abuse. Therefore, the district court did not err by considering the underlying facts of the previous termination to determine whether appellants had rebutted the statutory presumption.

II. The district court did not err in concluding that parents failed to rebut the presumption of palpable unfitness.

Parents also contend that the district court erred when it concluded that parents did not produce sufficient evidence to rebut the statutory presumption of palpable unfitness. We are not persuaded.

To rebut the presumption, a parent needs to produce enough evidence "to support a finding that the parent is suitable to be entrusted with the care of the children." *J.A.K.*, 907 N.W.2d at 246 (quotation omitted). The evidence necessary to rebut a presumption of palpable unfitness need only "create a genuine issue of fact." *Id.* In determining whether a parent's evidence rebuts the presumption that the parent is palpably unfit, a court should credit and consider the evidence without weighing it against any contrary evidence. *See In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445-47 (Minn. App. 2011) (concluding that the parent's evidence, "if believed," would support a finding that she was not palpably

unfit, and that the evidence was therefore sufficient to rebut the statutory presumption), *review denied* (Minn. Jan. 6, 2012).

Parents argue that father's testimony, taken as true, rebutted the presumption that parents are palpably unfit. And parents contend that in making a contrary decision, the district court erroneously compared *J.A.K.* to the circumstances in this case.

In *J.A.K.*, this court determined that mother rebutted the statutory presumption that she was palpably unfit. 907 N.W.2d at 247. This court determined that mother rebutted the presumption by presenting testimony from her therapist that mother was "doing great," as well as evidence that mother (1) had consulted with a psychiatrist and had begun taking medication for her depression; (2) had maintained her sobriety for more than a year; (3) had maintained consistent employment for two consecutive years; (4) had completed a parenting assessment and regularly attended supervised visits with her child; and (5) was participating in therapy. *Id.* at 246-47.

The district court determined that "[i]n comparison with the mother in *J.A.K.*," parents failed to meet their burden of production to produce evidence sufficient to support a finding that they are not palpably unfit. "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. And the supreme court has stated that the presumption that a parent is palpably unfit is "easily rebuttable." *R.D.L.*, 853 N.W.2d at 137. Consequently, we agree that the quantum of evidence produced in *J.A.K.* does not necessarily establish a baseline for determining whether a parent has rebutted the presumption of palpable unfitness.

Nonetheless, mother did not testify at trial and very little evidence was produced on her behalf to rebut the presumption of palpable unfitness. The evidence relating to mother consisted of father's testimony that mother provided the appropriate care for the child during the first six days after he was born, and that mother regularly exercised her visitation with the child after he was removed from the home. Father also testified that mother has participated in "learning and growing since the last case," and that they "took an oath" not to spank the child. Moreover, father testified that mother has been receiving therapy since the child was removed from the home. But father acknowledged that mother is depressed and has "had suicidal thoughts." No further evidence was produced on mother's behalf indicating that she has addressed the underlying concern from the previous TPR proceeding—the allegations of physical abuse of the children. On this limited record, the district court did not err in ruling that mother failed to rebut the statutory presumption that she is palpably unfit to be a party to the parent-child relationship.

Similarly, we discern no error with respect to the district court's determination that father failed to rebut the statutory presumption that he is palpably unfit to be a party to the parent-child relationship. The only evidence father produced was his own testimony. Father testified that he provided appropriate care for the child for the six days the child was in the home, that he regularly exercised his visitation with the child, and that he recently started seeing a therapist. He also testified that he has made an effort to educate himself about the difference in attitudes related to physical discipline between his home country of El Salvador and the United States by reading a number of parenting books, and that his efforts have helped him understand that physical discipline is not necessary. But on

cross-examination, father downplayed his prior abuse of Am.A. and Y.B. by claiming that he is not a "bad father" for having "spank[ed]" his children. And, father denied hitting Am.A. and Y.B. with belts and cords, despite the prior TPR order finding to the contrary. When asked what parenting techniques he used with Am.A. and Y.B. that he now thinks are inappropriate, father answered only "[t]o take away the television for one month and the tablet for one month." Father further testified on cross-examination that Y.B. was lying about the prior abuse he suffered. Father's testimony demonstrates that he neither understood, nor addressed, the reasons for the previous termination of his parental rights. As the district court found, father "at no time" has taken "personal responsibility for his role in the prior TPR case" and, in fact, continues "to contest the necessity for it." The record supports the district court's determination that father failed to "produce sufficient evidence to support a finding" that he is currently suitable "to be entrusted with the care" of this child. The district court did not err in ruling that father failed to rebut the statutory presumption that he is palpably unfit to be a party to the parent-child relationship.

Parents argue that the district court erroneously weighed the credibility of father's testimony in reaching its conclusion that neither mother nor father had rebutted the statutory presumption. We disagree. A careful examination of the district court's findings reveal that the district court did not weigh the credibility of father's testimony. Rather, the district court considered father's testimony as a whole and correctly found that it was "inconsistent." Further, as explained above, the district court properly determined that both father and mother failed to produce sufficient evidence to demonstrate that they are presently suitable "to be entrusted with the care" of the child. Parents would have the court

look only at certain pieces of father's testimony and ignore other pieces in determining whether the presumption was rebutted, but cite to no authority to support this proposition. We conclude that the district court did not err in considering the entirety of father's testimony—the only evidence offered by parents—in determining whether parents rebutted the statutory presumption of palpable unfitness. Accordingly, the district court did not abuse its discretion by terminating parents' parental rights to the child.

Affirmed.