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Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1203

In re the Matter of the Welfare of the Child of: J. A. R.-A., Father.

Filed December 23, 2019
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-JV-19-1757

Mark D. Fiddler, Fiddler Osband, LLC, Edina, Minnesota (for appellants adoptive parents Jane Doe and John Doe)

Ronald M. Walters, Minneapolis, Minnesota (for respondent mother S. B. A.)

Polly Ann Krause, Minneapolis, Minnesota (for respondent father J. A. R.-A.)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellants John and Jane Doe challenge the district court's dismissal of their private petition to terminate J.A.R.-A's parental rights for lack of a *prima facie* case. Because appellant's termination-of-parental-rights (TPR) petition fails to state a *prima facie* case that father is a palpably unfit parent pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4) (2018), we affirm.

FACTS

D.A.R. was born to S.A.R. (mother) and J.A.R.-A. (father) in January 2019. After D.A.R.'s birth, mother filed a consent to adoption. Appellants planned to adopt D.A.R., and D.A.R. was placed with appellants pending the adoption.

Following mother's consent to adoption, appellants petitioned to terminate father's parental rights to D.A.R., alleging that father is a palpably unfit parent because of his criminal history, traumatic brain injury, substance abuse, and potential future incarceration. From our review of the record and the district court's order, it appears father has never had contact with D.A.R. Shortly after appellants petitioned to terminate father's parental rights, mother and father signed a recognition of parentage involving D.A.R.

After the admit/deny hearing, the district court dismissed the TPR petition for failing to state a *prima facie* case in support of termination. The district court concluded that the petition, despite appellants' allegations about father's criminal history, substance abuse, traumatic brain injury, and potential future incarceration, failed to connect these allegations to father's ability to care for D.A.R.

This appeal follows.

D E C I S I O N

I. Standard of Review

The parties, citing Minn. R. Civ. P. 12, contend that our standard of review for dismissal of a TPR petition for failure to state a *prima facie* case is *de novo*. We disagree in part. The Minnesota Rules of Juvenile Protection make clear that the Minnesota Rules of Civil Procedure do not apply in juvenile protection matters. Minn. R. Juv. P. 3.01

("Except as otherwise provided by these rules, the Minnesota Rules of Civil Procedure do not apply to juvenile protection matters."). Therefore, rule 12 does not apply here.

A TPR petition must allege a *prima facie* case "in support of termination of parental rights." Minn. R. Juv. P. 55.03, subd. 2(c).[1] Similarly, both adoptive-placement matters and motions to modify custody also require the party seeking relief to allege a *prima facie* case for the relief sought. Minn. Stat. § 260C.607, subd. 6(a), (b) (2018) (adoptive placement); *Nice-Peterson v. Nice-Peterson*, 310 N.W.2d 471, 471 (Minn. 1981) (modification of custody). Without being pointed to dispositive authority, we conclude that a TPR petition is sufficiently analogous to adoptive-placement matters and custody-modification matters that a similar standard should apply here.

When reviewing both dismissal of a custody-modification motion and dismissal of an adoptive-placement motion for failure to state a *prima facie* case, we first review *de novo* whether the district court properly viewed the movant's allegations and supporting documents. *Boland v. Murtha*, 800 N.W.2d 179, 185 (Minn. App. 2011); *see In re Welfare of Children of L.L.P.*, 836 N.W.2d 563, 570 (Minn. App. 2013) (applying the *Boland* standard in an adoptive-placement appeal). In these circumstances, the district court must

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[1] The Minnesota Supreme Court promulgated amendments to the rules of juvenile protection procedure effective September 1, 2019 "to simplify the rules and incorporate necessary changes for consistency with updated laws and regulations." *Order Promulgating Amendments to the Rules of Juvenile Protection Procedure and the Rules of Adoption Procedure*, Nos. ADM10-8040, 10-8041 (Minn. May 13, 2019); *see also Order Promulgating Amendments to the Rules of Juvenile Protection Procedure*, No. ADM10-8041 (Minn. Aug. 30, 2019) (amending Minn. R. Juv. Prot. P. 59 for reestablishment of the legal parent and child relationship following legislative amendments). The amendments to the rules are effective September 1, 2019 and apply to cases pending on that date. *Id.*

accept facts in the movant's supporting documents as true, disregard contrary allegations, and consider the non-moving party's supporting documents only to the extent that they explain or provide context. *Boland*, 800 N.W.2d at 185; *see L.L.P.*, 836 N.W.2d at 570 (same). Second, we review the district court's determination of whether appellants established a *prima facie* case for an abuse of discretion. *Boland*, 800 N.W.2d at 185; *see L.L.P.*, 836 N.W.2d at 570 (same). Third, we review *de novo* whether the district court properly determined the need for an evidentiary hearing. *Boland*, 800 N.W.2d at 185; *see L.L.P.*, 836 N.W.2d at 570 (same).

We also note that the "quantum of proof is implicitly incorporated into the requirement that the movant present a prima facie case." *Swanlund v. Shimano Indus. Corp., Ltd.*, 459 N.W.2d 151, 155 (Minn. App. 1990). The evidentiary burden at a TPR trial is clear and convincing evidence. Minn. R. Juv. P. 58.03, subd. 2(a). Thus to avoid dismissal of a TPR petition for failure to allege a *prima facie* case, a party seeking a TPR must allege that the facts supporting the TPR can be shown by clear and convincing evidence.

II. The district court did not abuse its discretion in determining that appellants' TPR petition fails to state a *prima facie* case in support of termination of father's parental rights.

All agree that the district court properly considered appellants' allegations as true. We therefore need not review *de novo* this first step and instead turn to whether the district court abused its discretion in concluding that the petition failed to state a *prima facie* case. *See Boland*, 800 N.W.2d at 185.

Appellants allege one statutory ground for TPR in their petition: that father is palpably unfit to parent "because . . . of specific conditions directly relating to the parent and child relationship . . . of a duration or nature that renders" father unable to care for D.A.R. for the reasonably foreseeable future. Minn. Stat. § 260C.301, subd. 1(b)(4). The burden under this subdivision is "onerous," and requires the movant "[to] prove a consistent pattern of specific conduct or specific conditions existing at the time of the hearing that, it appears, will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child." *In re Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008).

Appellants' TPR petition alleges that father is palpably unfit because of (1) his "extensive criminal background," (2) a traumatic brain injury he suffered, and (3) his history of substance abuse. The petition asserts that father's "criminal conduct, aggressive nature, mental limitation, and expected lack of freedom due to incarceration, deem him unfit" to parent. Appellants contend that the district court incorrectly concluded that these allegations do not state a *prima facie* case that father is palpably unfit to parent D.A.R. We are not convinced.

The district court properly concluded that appellants' petition fails to demonstrate a causal connection between father's specific alleged behavior and conditions to an inability to care appropriately for D.A.R. The district court therefore did not abuse its discretion in dismissing the TPR petition.

First, we address appellants' contention that the district court misinterpreted section 260C.301, subdivision 1(b)(4), as prohibiting TPR if a parent has never had contact with

the child. We do not interpret the district court's order as construing the law in this way. Instead, the district court properly noted that father had no contact with D.A.R. in its analysis of whether the petition alleged facts that demonstrate that father is palpably unfit to parent this child. Based on a plain reading of the statute, parental rights may be terminated without that parent having contact with the child if there exist "specific conditions *directly relating to the parent and child relationship* . . . [that] are of a duration or nature that renders the parent unable" to care for the child for the foreseeable future. Minn. Stat. § 260C.301, subd. 1(b)(4) (emphasis added). We see nothing in the district court's order that suggests otherwise.

In further support of their argument that the district court erred, appellants point to father's criminal history, arguing that this history shows a "propensity for anger" that makes him a palpably unfit parent. Though it may be true that this history could demonstrate a "propensity for anger," to support a TPR, this history must be shown to be "permanently detrimental to the welfare of the child." *T.R.*, 750 N.W.2d at 661 (quotation omitted). Appellants' TPR petition fails to connect father's criminal history to the welfare of D.A.R.

The petition also asserts that father's "frequent arrests will undoubtedly leave the infant abandoned somewhere with some unknown adult for an extended period of time." Not only is this speculative, but "[i]ncarceration alone does not necessarily preclude a person from acting in a parental role." *In re Welfare of Children of A.I.*, 779 N.W.2d 886, 892 (Minn. App. 2010), *review dismissed* (Minn. Apr. 20, 2010). We agree that

incarceration is not irrelevant, but the petition failed to connect speculations about future incarceration to father's inability to care for D.A.R.

Appellants next point to an alleged traumatic brain injury "due to a couple of heroin or opioid overdoses which further limits [father's] parenting capacity" as a basis to establish a *prima facie* case for the petition. Developmental disabilities and mental illness, alone, however, are insufficient to terminate parental rights; instead, courts must consider a parent's conduct to determine whether the parent's condition permanently affects the ability to parent. *T.R.*, 750 N.W.2d at 661-62. Appellants' petition fails to connect father's alleged traumatic brain injury to an inability to parent in any substantive way, offering a factually unsupported conclusion that the traumatic brain injury "limits his parenting capacity."

Similarly, appellants allege that father's history of substance abuse makes him unfit to parent this child. The petition, however, fails to establish any causal connection between the history of substance abuse and father's alleged inability to care for D.A.R. *See id.* at 663-64.

In sum, we conclude that the district court did not abuse its discretion in dismissing appellants' TPR petition for failure to state a *prima facie* case in support of terminating father's parental rights. We therefore affirm the district court.

Affirmed.