STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1253

In re the Matter of the Welfare of the Children of:
J. D. T. and J. M. O., Parents.

Filed January 21, 2020
Affirmed
Smith, Tracy M., Judge

Grant County District Court
File No. 26-JV-19-69

Matthew P. Franzese, Wheaton, Minnesota (for appellant-mother J.D.T.)

Justin R. Anderson, Anderson Law Office, P.A., Elbow Lake, Minnesota (for respondent Grant County Social Services)

Geri Krueger, Glenwood, Minnesota (guardian ad litem)

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Bryan, Judge.

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

SMITH, TRACY M., Judge

Appellant-mother J.D.T. challenges the district court's order denying her petition to voluntarily terminate her parental rights to her children and granting respondent Grant County Social Services (GCSS)'s petition to involuntarily terminate her parental rights to the children. She argues that the district court erred by (1) denying her petition for voluntary termination of her parental rights and (2) declining to treat her petition for

voluntary termination of her parental rights as superseding GCSS's petition for involuntary termination. We affirm.

FACTS

J.D.T. does not dispute that her parental rights to the children should have been terminated but argues that they should have been terminated voluntarily rather than involuntarily. The district court found the following facts.

J.D.T. is the biological mother of C.K.O. and B.R.O. (the children),[1] who were ages three and two, respectively, when J.D.T.'s parental rights to them were terminated. J.D.T. has another child who is not involved in this matter but who was involved in a prior child-in-need-of-protection-or-services (CHIPS) proceeding initiated in 2015. That matter ended when J.D.T. voluntarily transferred custody of the child to the child's father. A few months later, C.K.O. was born. When C.K.O. was only two days old, Pope County Family Services opened a file relating to his neglect. In March 2016, when he was two months old, C.K.O. was removed from the home on an emergency hold after law enforcement arrested his father on felony drug charges and found controlled substances in the home where C.K.O., J.D.T., and father resided. The resulting CHIPS matter was closed in September 2016 after C.K.O.'s father and J.D.T. complied with their case plan. In August 2017, B.R.O. was born.

[1] The children's shared biological father, J.M.O., was also a party to these proceedings in the district court, as GCSS petitioned to terminate both his and J.D.T.'s parental rights, but the district court denied the termination of parental rights (TPR) petition in regards to father.

GCSS filed the CHIPS petition underlying this case in May 2018. At that time, the district court ordered that both parents provide hair follicle samples. Both parents tested positive for methamphetamine. B.R.O. also tested positive for high levels of methamphetamine. As a result, law enforcement removed the children from the home on June 13. At a pretrial hearing on June 26, J.D.T. admitted the allegations in the CHIPS petition, specifically acknowledging that her children were in need of protection or services due to her drug use. GCSS filed, and the district court approved, an out-of-home-placement plan that required that J.D.T.

> (1) remain sober from all illegal drugs; (2) complete a Rule 25 Chemical Assessment and follow all recommendations; (3) complete a diagnostic assessment and follow all recommendations; (4) complete a parenting education course; (5) complete a parental-capacity assessment and follow all recommendations; (6) find employment or other services to be able to provide for herself and her children financially.

A few months later, in an October 1 order, the district court noted that J.D.T. had only minimally cooperated with social services. From June 26 to September 12, 2018, she attended only two of the arranged parenting visits with the children, with the result that she had engaged with them for only four hours in the span of 78 days. During the same period, she had refused drug tests on multiple occasions and tested positive for methamphetamine use on other occasions.

J.D.T. entered an in-patient chemical-dependency treatment program in December 2018 and was discharged in late-January 2019. On February 25, 2019, she tested positive for methamphetamine. At that time, she was about four months pregnant. She did not

appear for scheduled drug testing on March 7, 22, and 29, and then again tested positive for methamphetamine on April 1.

On March 11, 2019, GCSS filed a petition to terminate J.D.T.'s parental rights to C.K.O. and B.R.O. (GCSS's TPR petition). GCSS's TPR petition requested termination based on Minn. Stat. § 260C.301, subd. 1(b)(5) (2018), which permits termination when reasonable efforts, under the direction of the court, have failed to correct the conditions leading to out-of-home placement. At an admit-or-deny hearing on April 22, 2019, J.D.T. offered to admit the allegations in GCSS's TPR petition but wanted any termination of her parental rights to be considered voluntary rather than involuntary. GCSS objected to a voluntary termination, and the district court set another hearing to address the involuntary-versus-voluntary issue. The parties appeared again on May 13, and J.D.T. denied the allegations in GCSS's TPR petition.

On May 21, a few days before the scheduled TPR trial, J.D.T. filed a petition to voluntarily terminate her parental rights to the children (voluntary TPR petition). Her supporting affidavit stated that she desired to terminate her parental rights for the following reasons:

> I am now and in the foreseeable future unable to comply with the duties imposed upon me by the parent and child relationship with my minor children, [C.K.O. and B.R.O.]. More specifically, I believe that the minor children have been in foster care for too long and need to be placed with a permanent family unit (preferably a family member), and I further believe that I am presently unable to provide the minor children with the care and stability that they need in order to focus on the impending birth of my new child, maintaining my sobriety, and obtaining gainful employment.

The same day, GCSS filed an objection to J.D.T.'s voluntary TPR petition, with a supporting memorandum. GCCS asked the district court to consider its TPR petition before J.D.T.'s and made various arguments against voluntary termination, including that J.D.T.'s petition was not supported by good cause because she merely filed it to avoid the presumption of palpable unfitness to be a parent that would follow an involuntary termination of her parental rights. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (2018) ("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 . . . .").

At trial on May 24 and June 20, J.D.T. did not testify and rested on her voluntary TPR petition and affidavit. In its July 23 order, the district court denied J.D.T.'s voluntary TPR petition because it found that her stated basis for the request did "not rise to the level of 'good cause.'" It also granted GCSS's involuntary TPR petition, though, because it found that the conditions that led to the children's out-of-home placement had not been corrected.

J.D.T. now appeals.

D E C I S I O N

J.D.T. argues that the district court erred by (1) denying her voluntary TPR petition and (2) declining to treat her voluntary TPR petition as superseding GCSS's TPR petition. No other party participated in this appeal. We address each of J.D.T.'s arguments in turn.

I. The district court did not err by denying J.T.D.'s petition for voluntary termination of her parental rights.

A district court's finding regarding whether a parent's desire for a voluntary termination of parental rights is based on good cause "must be upheld if supported by substantial evidence and not clearly erroneous." *In re Welfare of D.D.G.*, 558 N.W.2d 481, 485 (Minn. 1997). On review, "[c]onsiderable deference is due to the district court's decision because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn.1996). "Interpretation of a statute," though, "involves a question of law, which is subject to de novo review." *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54 (Minn. 2004).

Minn. Stat. § 260.301, subd. 1 (2018), provides that parental rights may be terminated voluntarily or involuntarily. Parental rights may be voluntarily terminated "with the written consent of a parent who for good cause desires to terminate parental rights." Minn. Stat. § 260C.301, subd. 1(a). Under this statute, the inquiry is simply not whether good cause exists to terminate the parent's rights; it is whether the parent "for good cause desires" to have their rights terminated. *Id.* Subdivision 1(b) of the same chapter governs involuntary terminations. When one or more of the nine enumerated deficiencies exists, a district court may terminate parental rights involuntarily. Minn. Stat. § 260.301, subd. 1(b). "[C]ircumstances that justify involuntary termination do not necessarily justify voluntary termination." *In re Welfare of W.L.P.*, 678 N.W.2d 703, 712 (Minn. App. 2004).

J.D.T. argues that the district court erred in two ways in denying her petition. First, she argues that the district court abused its discretion by considering the effect that an

involuntary termination would have on her ability to parent future children. Second, she argues that good cause does exist for a voluntary termination of her parental rights.

We turn first to whether the district court impermissibly considered the effect of an involuntary termination on J.D.T.'s ability to parent future children. The "effect" at issue is that, "[o]nce it has been shown that the parental rights to one or more children have been involuntarily terminated, Minnesota law presumes the parent to be palpably unfit to be a party to a parent-child relationship." *In re Welfare of Child of T.C.M.*, 758 N.W.2d 340, 343 (Minn. App. 2008); *see also* Minn. Stat. § 260C.301, subd. 1(b)(4). Once this presumption applies, the burden then shifts to the parent to produce evidence sufficient "to support a finding that the parent is suitable to be entrusted with the care of the children." *In re Welfare of J.A.K.*, 907 N.W.2d 241, 246 (Minn. App. 2018) (quotation omitted).

J.D.T., who was pregnant at the time of trial, essentially suggests that the district court denied her voluntary TPR petition in favor of GCSS's TPR petition so that the presumption of unfitness to parent would apply to her. For support, she points to the district court's finding in paragraph 42 of its order, which states:

> [J.D.T.] understood that if her parental rights were involuntary terminated, then the County would have the ability to take her unborn child once that child was born, and she would have to overcome the presumption of unfitness. She further understood that if she were allowed to voluntarily terminate her parental rights, then the presumption of unfitness would not arise.

J.D.T. then cites only an unpublished opinion from this court to support her argument. Unpublished opinions are of limited value in deciding an appeal. *See* Minn. Stat. § 480A.08, subd. 3(c) (2018) (stating that "[u]npublished opinions of the Court of Appeals

are not precedential"); *In re Collier*, 726 N.W.2d 799, 806 (Minn. 2007) (noting that unpublished opinions are not precedential).

We are unpersuaded by J.D.T.'s argument for several reasons. First, the unpublished case that she cites references the permissible considerations for an *involuntary*, rather than a voluntary, termination. Involuntary termination of parental rights is specifically governed by the statutory conditions in Minn. Stat. 260C.301, subd. 1(b)(1)-(9), whereas "good cause" for voluntary termination is undefined by statute and is presented as a flexible standard in the controlling caselaw. *See A.S.*, 698 N.W.2d at 195. She cites no authority that suggests that a court may not consider the effect on future children when determining whether a parent desires, for good cause, to voluntarily terminate their parental rights.

Furthermore, J.D.T.'s argument appears to rely on the assumption that, if the district court granted her voluntary TPR petition, it could not also grant GCSS's involuntary petition. This assumption, though, is without support in any rule of procedure or controlling caselaw; as explained below in section II, we see no reason why the district court could not have granted either or both petitions.

Finally, even if J.D.T. had shown that the district court is prohibited from considering the effect of an involuntary termination when assessing whether a parent desires for good cause to voluntarily terminate their rights, her argument seems to mischaracterize the import of the district court's finding regarding the future effect. The district court explained why it did not find J.D.T.'s request for voluntary termination supported by good cause as follows:

> [J.D.T.'s] purported basis for requesting voluntary termination does not rise to the level of "good cause." [J.D.T.] claims that with the impending birth of her fourth child, she cannot provide care and stability to her two youngest children and maintain her sobriety and maintain gainful employment. But these obstacles are common obstacles for any parent with chemical dependency issues. While she might have some stresses, such is parenting. The basis advanced by [J.D.T.] for requesting voluntary termination is simply not credible, given the *timing* and the *known impact*.

(Emphasis added.) The "timing" of the motion for voluntary termination was a few days before the TPR trial. The "known impact" seems to refer to the district court's finding in paragraph 42, quoted above, that J.D.T. knew about the consequences of an involuntary termination on her ability to parent future children.

A district court, in assessing a good-cause desire for voluntary termination, determines "whether [the parent] had sound reasons for consenting *at the time of termination*." *D.D.G.*, 558 N.W.2d at 486 (emphasis added). Here, the district court questioned the grounds for voluntary termination advanced by J.D.T. in her petition and affidavit, which she did not support with further evidence at trial. In doing so, the district court found that J.D.T. knew about the consequences of an involuntary termination versus a voluntary one and that her knowledge, along with the timing of her petition (filed a few days before trial), called into question the credibility of the reason she advanced as her good-cause desire to terminate parental rights. J.D.T. cites no law to suggest that a district court cannot, in its determination of "good cause," consider whether the parent's purported basis for seeking termination is credible. Accordingly, J.D.T. has not shown that the district

court erred by considering an impermissible factor when it determined whether she desired for good cause to terminate her parental rights to the children.

We turn to J.D.T.'s second argument, which is that "good cause exists to voluntarily terminate [her] parental rights." J.D.T. does not frame this argument in terms of a particular appellate standard of review, but we understand her argument as implicating the clear-error standard. "[T]ermination of parental rights is always discretionary with the juvenile court," *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014), and appellate courts apply a clear-error standard of review to the district court's factual findings that a statutory ground for termination of parental rights exists, *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995). A district court's finding on whether a parent for good cause desires to terminate parental rights is reviewed for clear error. *D.D.G.*, 558 N.W.2d at 485 ("The trial court's finding of good cause in this case must be upheld if supported by substantial evidence and not clearly erroneous.").

In her petition and affidavit for voluntary termination, J.D.T. offered the following bases to support her request: her chemical dependency, her children's need for a permanent family unit, and her inability to provide care and stability for the children while she is focusing on the impending birth of her new child, maintaining sobriety, and obtaining employment. The district court found that J.D.T.'s asserted bases for termination were "common obstacles for any parent with chemical dependency issues," did not "rise to the level of 'good cause,'" and were "simply not credible, given the timing and the known impact" of her request.

In support of her argument that the district court erred, J.D.T. asserts that her stated reasons for voluntary termination "are sound [and] fall right in line with the cases" cited in her brief. "Good cause" is a flexible standard, though, and it can be found "under a variety of circumstances." *W.L.P.*, 678 N.W.2d at 712 (quotation omitted); *compare In re Welfare of K.T.*, 327 N.W.2d 13, 17-19 (Minn. 1982) (upholding the trial court's finding of good cause when a one-year-old child had resided in a foster home since birth, the parent had not visited the child, and the parent did not believe that she was able to take care of a second child), *and In re Welfare of J.M.S.*, 268 N.W.2d 424, 427 (Minn. 1978) (concluding that mother had "good cause" for requesting termination where she desired that her child to have two adoptive parents), *with In re Welfare of Alle*, 230 N.W.2d 574, 576-77 (Minn. 1975) (holding that good cause did not exist when the parent's sole motivation for voluntary termination appeared to be avoiding the financial burden of supporting his adoptive children).

Here, the district court questioned whether J.D.T.'s desire to terminate her parental rights was indeed motivated by good cause. J.D.T. did not offer anything in support of her voluntary TPR petition beyond the affidavit that she submitted with it. Good cause exists under circumstances "usually related to the best interests of the child." *A.S.*, 698 N.W.2d at 195. And, here, the district court appears to have reasonably concluded that J.D.T. had not demonstrated a concern with the best interests of the children but rather with protecting her own interest in parenting her future child. In light of the timing of J.D.T.'s request and the limited information that she presented to the district court regarding her purported good-cause desire for termination, we discern no clear error by the district court.

II. J.D.T.'s petition for voluntary termination of her parental rights did not supersede GCSS's petition for involuntary termination of her parental rights.

J.D.T. also argues that, because the district court erred by denying her petition for voluntary termination, this court should (1) reverse the district court's order granting GCSS's petition for involuntary termination and (2) remand to the district court to issue a new order granting voluntary termination. She bases this request on an argument that her petition for voluntary termination "supersedes," or "supplants," GCSS's petition for involuntary termination. She cites the following language from *W.L.P.*, 678 N.W.2d at 712, in support of her argument:

> [T]here are at least two procedures parents can utilize to convert an involuntary termination petition into a voluntary one. Parents can: (1) file a new petition supported by a factual basis articulating good cause and cite to Minn. Stat. § 260C.301, subd. 1(a), as the statutory authority for the petition; or (2) formally amend the original petition to cite to Minn. Stat. § 260C.301, subd. 1(a), as the statutory basis for the petition.

We disagree that J.D.T.'s petition has the procedural effect that she asserts. J.D.T. contends that, under *W.L.P.*, a parent can, at any time during termination proceedings, "convert" a county's involuntary TPR petition to a voluntary TPR petition simply by filing his or her own termination petition, thereby preventing the district court from granting the county's involuntary TPR petition. We disagree that *W.L.P.* permits this result.

In *W.L.P.*, the issue before this court was whether a parent, by simply admitting to the allegations in the county's involuntary TPR petition, "converted" the proceeding into a voluntary termination. 678 N.W.2d at 711. We held that the admission did not have such an effect for several reasons, including that (1) circumstances that justify involuntary

termination do not necessarily justify voluntary termination; (2) the county, rather than the parent, filed the TPR petition; (3) the TPR petition alleged five grounds for *involuntary* termination; and (4) the parent had "at least two procedures" available to "convert" an involuntary TPR petition to a voluntary one—file a new petition and cite to Minn. Stat. § 260C.301, subd. 1(a), or have the original petition amended to include the statutory ground of subdivision 1(a). *Id.* at 712. The *W.L.P.* opinion does not cite to a case or rule of procedure for the proposition about "convert[ing]" a TPR petition. *See id.*

We recently rejected an appellant-parent's contention, which was likewise based on *W.L.P.*, that he had converted an involuntary TPR proceeding into a voluntary proceeding by filing his own voluntary TPR petition. *See In re Welfare of N.E.R.*, No. A17-1112, 2018 WL 492654, at *5 (Minn. App. Jan. 22, 2018). Though unpublished and thus not precedential, *N.E.R.* usefully lays out three reasons why the parent's argument and reliance on *W.L.P.* was "unavailing." *Id.* at *4. First, the language in *W.L.P.* was dicta, as the court was not presented with a parent's attempt to convert the proceedings via filing their own termination petition in that case. *Id.* Second, the *W.L.P.* court provided no authority for its "convert" language and the Rules of Juvenile Protection Procedure authorize no such conversion. *Id.* at *5.

> Third, and most importantly, allowing a parent to unilaterally prevent the involuntary termination of his parental rights even if statutory grounds for an involuntary termination are alleged and proved is inconsistent with "[t]he paramount consideration in all juvenile protection proceedings," which is the health, safety, and best interests of the child.

Id. (quoting Minn. Stat. § 260C.001, subd. 2(a) (2016)). We reasoned that "allowing a parent to unilaterally 'convert' an involuntary TPR proceeding into a voluntary one and thereby eliminate a potential presumption of palpable unfitness that could protect other children who may be affected by the TPR would usurp the district court's authority to provide for the best interests of children." *Id.* We adopt this rationale here and decline to hold that J.D.T.'s voluntary TPR petition "converted" or "supplanted" GCSS's involuntary TPR petition. The district court had the authority to grant termination of J.D.T.'s parental rights to the children on the basis of either or both petitions.

Affirmed.