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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0008

In the Matter of the Welfare of the Child of:
J. S., Adjudicated Father.

Filed May 26, 2020
Affirmed
Segal, Chief Judge

Ramsey County District Court
File No. 62-JV-19-800

Patrick D. McGee, Forest Lake, Minnesota (for appellant J.S.)

John J. Choi, Ramsey County Attorney, Jenese Larmouth, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Social Services Department)

Lawrence Miles, St. Paul, Minnesota (guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

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

SEGAL, Chief Judge

On appeal from the district court's denial of father's motion to vacate the default order terminating his parental rights, father argues that the district court erred when it concluded that father lacked a reasonable defense on the merits of the petition to terminate father's parental rights. We affirm.

FACTS

Appellant father J.S. and mother T.N. previously had their parental rights involuntarily terminated to two children in 2012. *See In re Welfare of the Children of: T.N.*, No. A12-1099 (Minn. App. Nov. 26, 2012). Due to this previous termination, respondent Ramsey County Social Services Department (the county) was notified when T.N. gave birth to their third child (J.) in 2014.[1] The county filed a child in need of protection or services (CHIPS) petition, which was dismissed without a CHIPS adjudication on December 17, 2014. Father executed a recognition of parentage of J. in 2015.

In April 2019, the county learned of father's recognition of parentage of J. while investigating a matter concerning another child of T.N. The county filed an expedited petition to terminate father's parental rights to J. in May 2019. The petition was based on two grounds: (1) that father had substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon him by the parent and child relationship under Minn. Stat. § 260C.301, subd. 1(b)(2) (2018); and (2) that father was palpably unfit to parent J. under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). The petition alleged that father was not currently providing a home for J.; J. had been in his grandmother's care for most of his life; father had a history of judicial commitments to address his mental-health needs and had been committed to St. Peter Regional Treatment Center until March 2019; and father had not contacted the county to inquire about the health, safety and welfare of

[1] Father and child have the same initials and, to avoid confusion, the child will be referred to as J. throughout.

J. and had not provided the county with information or documentation that he had addressed the conditions leading to his previous child-protection involvement and involuntary termination of parental rights (TPR). Finally, the petition alleged that, due to father's previous involuntary TPR, he was presumed to be palpably unfit to parent J. in accordance with Minn. Stat. § 260C.301, subd. 1(b)(4).

On June 17, father personally appeared with counsel at the admit/deny hearing and entered a denial. At the admit/deny hearing, father and his attorney received notice of his August 12 pretrial hearing date. Father failed to appear at his pretrial hearing and the county requested to proceed with father in default and terminate his parental rights. Over father's attorney's objection, the court granted the request and proceeded with the default hearing. The county social worker assigned to the case provided testimony at the hearing in support of the TPR petition and that termination was in the best interests of J. The court terminated father's parental rights to J.

Father filed a motion to vacate the order terminating his parental rights to J., which the county opposed. The district court held a hearing on the motion on November 18. Father was not represented by counsel at the hearing. Father provided testimony that he was not at the pretrial hearing because he missed his bus and had to take a later one. He was not sure if he tried to call his attorney, but noted that he spoke to the attorney once he arrived at court approximately 40-45 minutes after the time his hearing was set. He testified that he could not be there in the past for his son because of problems with T.N.'s mother and brother and at times he would plan on picking up J. but "[T.N.] changed her mind." He also testified that his mental-health problems stemmed from his issues with T.N.'s

mother and brother and that they interfered with him seeing his son. Father said that he wanted to have custody of J. or help choose someone else to take care of him and that he had helped change J.'s diapers and bought him things when he was able. Father's pastor also testified, stating that he had met father in the spring of 2019 and father intended to sign up for a parenting class that the church offered annually through an outside organization that provided a certificate after completing several sessions.

The district court, both on the record and in his written findings, applied the four-factor test for determining whether to vacate a default order in a TPR case. The district court found in favor of father on three of the four factors: that father's absence at the August 2019 hearing was excusable because father had appeared for prior hearings in the case and claimed he made it to the courthouse on the date of the hearing, albeit 45 minutes late, because he missed the bus; that father acted with due diligence in filing his motion to vacate the default order; and, on the factor of prejudice, that this was also not a barrier because a TPR trial could be held and concluded prior to conclusion of the pending CHIPS action involving J.'s mother.

The district court, however, ruled against father on the factor of whether father had a reasonable defense on the merits of the TPR petition. Here, the district court concluded that father neither provided sufficient evidence to rebut the presumption that he was palpably unfit to parent J. nor created a genuine issue of fact over whether father "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon [him] by the parent and child relationship." The district court based its conclusion on the fact that father had been largely absent over much of the five years of

J.'s life and had not provided a home for him, had not demonstrated that he had addressed the concerns that contributed to the prior TPR, failed to contact the county to inquire about J. after his civil commitment was terminated and, while father said he intended to sign up for the parenting class to be offered at the church, he had not yet taken any actions to enroll or take any parenting classes. The district court denied father's motion to vacate the default TPR order. Father appeals.

D E C I S I O N

On appeal from the district court's denial of a motion to vacate a default order, the district court's decision will be upheld absent a clear abuse of discretion. *In re Welfare of the Children of Coats*, 633 N.W.2d 505, 507 (Minn. 2001). A party may be relieved from a default order based on "mistake, inadvertence, surprise, or excusable neglect" or "any other reason justifying relief from the operation of the order." Minn. R. Juv. Prot. P. 22.02.[2] In seeking the vacation of a default order in a TPR case, the moving party must show: (1) he has a reasonable defense on the merits; (2) he has a reasonable excuse for his failure to act; (3) he proceeded with due diligence after notice of entry of the default order; and (4) no substantial prejudice to the opposing party will result from vacating the order. *Coats*, 633 N.W.2d at 510. The moving party must satisfy all four factors for relief to be granted. *Id*.

[2] Rule 22 was amended in 2019 as part of a revision of the Minnesota Rules of Juvenile Protection Procedure. The rule was formerly codified as rule 46, and is referenced as such in previous caselaw. The current rule is substantively the same as the previous rule.

Father argues that the district court erred when it found that he failed to satisfy the first factor—that he has a reasonable defense on the merits. Under Minnesota law, "[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). Father acknowledges that because he previously had his parental rights involuntarily terminated to two children in 2012 the presumption is applicable. He argues, however, that because the threshold of evidence required to rebut the presumption is low,[3] he satisfied this burden. Father also argues that he offered sufficient evidence to create a triable issue over the neglect allegation in the petition. For both arguments, father points to his testimony that he did what he could and, but for the interference from T.N.'s mother and brother, he would have been more involved.

Father points to the case of *J.A.K.* to support his argument that he provided sufficient evidence to overcome the presumption that he is palpably unfit as a parent. The facts in *J.A.K.*, however, are significantly different from those in this case. There was ample evidence in the record that the mother in *J.A.K.* had made substantial efforts to correct the problems that had led to her prior TPR case. Mother had maintained her sobriety for more than a year and continuous employment for two years. 907 N.W.2d at 246. She had completed a parenting assessment and had regularly attended supervised visits with the

[3] To rebut a presumption of being palpably unfit, the parent must only provide sufficient evidence to "create a genuine issue of fact on the issue of palpable unfitness." *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 burden is merely one of production, not proof. *Id.*

child, where the therapist noted that she was attentive to the child's needs, a skilled mom and that the interactions with the child had been very positive. *Id.* at 246-47. The mother was in individual, group and dialectical behavioral therapy and was rated as a "leader in the group," and was making progress. *Id.* It was on this record that this court concluded that mother had presented sufficient evidence to rebut the presumption.

By contrast here, father has supplied no specific evidence of efforts he has undertaken to demonstrate that he can be a fit parent. His evidence, in essence, consists only of general statements of interest in parenting J. Based on the record in this case, the Minnesota Supreme Court's decision in *Coats* appears to be the more apposite precedent. In *Coats*, the Minnesota Supreme Court addressed the question of what level of evidence demonstrates a "reasonable defense on the merits" on a motion to vacate a default order in a TPR case. 633 N.W.2d at 511. The mother in *Coats* claimed she satisfied the burden of production because "she has repeatedly demonstrated interest in . . . her children by her previous court appearances and her contact with her children." *Id.* (quotation omitted). The court concluded, however, that "Coats' proferred defense on the merits is deficient because it is supported by no more than conclusory statements." *Id.* The court went on to note that "the record belies [Coats'] assertions regarding her demonstrated interest in her children and instead reveals a turbulent and consistently neglectful parental relationship." *Id.* The court thus affirmed the district court's denial of Coats's motion to vacate the default TPR order.

We come to the same conclusion here. Despite the fact, as noted by the district court, that father appeared for the first few TPR-related court hearings and expressed a

desire to parent J., it is inescapable that father has never provided a home for J. throughout most of the five years of J.'s life and, except for the conclusory statements about changing J.'s diapers and buying things for him as he was able, he presented no evidence that he has had any significant relationship with the child or otherwise been involved in J.'s life as a parent. Nor did he present any evidence that he had dealt with the issues that led to the termination of his parental rights to two other children. Indeed, even after father's mental-health civil commitment had ended, father never contacted the county to inquire about J. or J.'s welfare.

Based on the record of evidence provided by father in this case, we conclude that the district court's denial of father's motion to vacate the default termination of parental rights did not constitute an abuse of discretion.

Affirmed.