STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0064
A20-0065

In the Matter of the Welfare of the Children of:
J. B. and A. H., Parents. (A20-0064),

In the Matter of the Welfare of the Child of:
J. B. and D. V., Parents. (A20-0065).

Filed June 8, 2020
Affirmed
Worke, Judge

Otter Tail County District Court
File Nos. 56-JV-19-2572, 56-JV-19-2555

Kimberly Stommes, St. Cloud, Minnesota (for appellant J.B.)

Michelle M. Eldien, Otter Tail County Attorney, Benjamin G. A. Olson, Assistant County Attorney, Fergus Falls, Minnesota (for respondent Otter Tail County Department of Human Services)

Brian R. Geis, Fergus Falls, Minnesota (for respondent A.H.)

Stuart J. Kitzmann, Detroit Lakes, Minnesota (for respondent D.V.)

Ruth A. Lee, Fergus Falls, Minnesota (for children)

Janice Amundson, Dalton, Minnesota (guardian ad litem)

Considered and decided by Hooten, Presiding Judge; Worke, Judge; and Jesson, Judge.

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

WORKE, Judge

Appellant challenges the termination of her parental rights, arguing that the record does not support the district court's findings that she failed to rebut the presumption of palpable unfitness and that termination is in the children's best interests. Appellant also argues that the district court erred by concluding that reasonable efforts failed to correct the conditions leading to the out-of-home placement. We affirm.

FACTS

This termination-of-parental-rights (TPR) matter involves eight children. Appellant J.B. is the children's mother. A.H. is the father of seven children. D.V. is the father of the youngest child.

In 2016, the children moved to Missouri to live with A.H.[1] J.B. was unable to move due to her probation. During this time, J.B. had a child with D.J. In February 2019, J.B.'s parental rights to this child were involuntarily terminated. The basis for the TPR included previous physically assaultive behavior toward her children, controlled-substance use during her pregnancy, mental-health issues, lack of functional stability, and a lack of compliance and progress with the out-of-home-placement plan. D.J.'s parental rights were also involuntarily terminated.

In August 2019, the children and A.H. moved back to Minnesota and resided with J.B. and D.J. On August 17, 2019, police responded to the report of a possible assault at

[1] J.B. and A.H. apparently agreed to this arrangement. However, the record is unclear as to D.V.'s parenting involvement or why he consented to his child moving to Missouri.

the residence. D.J. informed officers that the oldest child had hit him in the face and threw a knife at him. The oldest child told officers that D.J. had hit him in the face and that he responded by pulling out a knife. The oldest child also told deputies that D.J. had kicked him in the stomach, which caused him to throw the knife at D.J. and call law enforcement. Officers spoke with other family members but could not determine who had been the primary aggressor, so they did not arrest anyone.

The following morning, around 3:00 a.m., officers were dispatched to a motor-vehicle crash with reported injuries. Officers observed a vehicle in a ditch that had struck a tree. D.J. was in the driver's seat, J.B. was lying on the ground, one of J.B.'s children was standing over her, and J.B.'s adult son was unconscious in the vehicle's back seat. D.J. told officers that he had smoked marijuana an hour before the crash and had been taking his prescription for clonazepam. J.B.'s child suffered a cut on his forehead and was stumbling. J.B.'s child was transported to the hospital, where he informed medical staff that J.B. gave him clonazepam. A blood test indicated that the child tested positive for the presence of marijuana and benzodiazepine.[2] As a result of these incidents in August, officers made a referral to respondent Otter Tail County Department of Human Services (the county) for an investigation.

On September 3, 2019, the county filed child-in-need-of-protection-or-services (CHIPS) petitions. The petitions were granted the same day. On September 4, 2019, the county filed TPR petitions, alleging that J.B. was palpably unfit to be a parent pursuant to

[2] Clonazepam is a benzodiazepine.

Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). On September 9, 2019, the county created a safety plan requiring that J.B. stop her shared lease of the residence with D.J., secure independent housing, and have only supervised contact with the children. The plan also required that the children be enrolled in public school and that the county have access to the children at all times.

In late September, the district court found that the TPR petitions established a prima facie case in support of terminating J.B.'s parental rights and that her parental rights to her infant child had been involuntarily terminated in February 2019. The following month, J.B. entered a denial to the TPR petitions. The district court then ordered that the county was relieved of its obligation to make reunification efforts.

The trial on the TPR petitions was held on November 26, 2019. The county moved for the district court to take judicial notice of the previous TPR order. J.B. was present at the commencement of trial, but left after the first break and did not return.

The district court received all of the county's exhibits without objection from J.B. The exhibits included: the district court's prior order involuntarily terminating J.B.'s parental rights to her infant child; police reports from the August 2019 incidents; a child-protection investigation summary; one child's dental records; the chronology summary of the county's involvement; and the out-of-home-placement plans.

The county called two child-protection workers to testify. The first testified that while J.B. had no physical contact with the children while they were in Missouri with A.H., she had telephone contact with them. The child-protection worker stated that the only evidence of J.B.'s parenting progress was that she had a residence. She also testified that

on August 29, 2019, J.B. called her and told her that there was conflict in the home and that A.H. was abusing the children. The child-protection worker stated that after responding to the home with law enforcement, J.B. "was primarily concerned with [the oldest child's] behavior toward [D.J.] and said that it was [the oldest child's]'s fault that [D.J.] was in jail" following the August incidents. She stated that it appeared that J.B. had not distanced herself from D.J. The child-protection worker testified that while the children appeared to love J.B. and wished to go home, it was in the children's best interests to remain in foster care because their medical and dental needs had not been met by J.B., and they were now receiving formal education and were socially engaged in the community.

The second child-protection worker testified that the children had significant educational needs. He also testified that it appeared that none of the children had received dental care and that at least three of them had significant dental issues. Further, the child-protection worker noted that it appeared that none of the children had received eye care, and two were given corrective lenses following their placement. He stated that the county recommended terminating J.B.'s parental rights.

J.B. did not present any evidence. Her attorney stated that even if J.B. had been present, she would not have testified.

The oldest child testified about his altercation with D.J. on August 17, 2019. He stated that he hoped that J.B. was no longer in a relationship with D.J. The oldest child testified that he thought it was extremely important for the children to remain together. He believed that J.B. could take care of them and stated that J.B. was a loving mother despite her bad choices with D.J. Two of the other children also testified that they wanted to live

with J.B. A third child, who did not testify, informed the district court of a preference for the family to stay together.

In a written summary, the guardian ad litem (GAL) recommended that the district court terminate J.B.'s parental rights. The GAL relied on the fact that J.B. did not participate in the TPR trial, she failed to move out of the residence shared with A.H., she had not resolved her mental-health issues, she continued her relationship with D.J. despite its negative impacts on the children, and she had not cooperated with the county. The GAL also noted that, "[t]hese children are incredibly resilient. Teachers all say how quickly they are learning and catching up to their peers. They are making friends and interacting outside their family. They all have bright futures ahead of them if given the opportunities to succeed."

On December 19, 2019, the district court involuntarily terminated J.B.'s parental rights in two separate orders. This court consolidated mother's appeals of the district court's orders.

D E C I S I O N

J.B. argues that the record does not support the district court's findings that she is palpably unfit to be a parent and that TPR is in the children's best interests. In addition, she argues that the district court erred by concluding that reasonable efforts failed to correct the conditions leading to the out-of-home placement.

"To involuntarily terminate parental rights, the district court must find that at least one of the eight statutory conditions for termination exist." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). On appeal from a TPR order, an appellate court closely

inquires into the sufficiency of the evidence to determine whether it is clear and convincing. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). This court reviews a district court's determination that a statutory basis for TPR exists and whether TPR is in the children's best interests for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Palpable unfitness

First, J.B. argues that the record does not support the district court's finding that she failed to rebut the presumption of palpable unfitness. J.B. also challenges the district court's factual findings, claiming that the TPR stemmed from the previous TPR determination without consideration of "where she was at with the children at the time of trial, and the improvements she had made."

"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, "[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). If this presumption applies, the burden of production is on 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 Child of J.A.K.*, 907 N.W.2d 241, 246 (Minn. App. 2018) (quotations omitted). The evidence necessary to rebut a presumption of palpable unfitness need only "create a genuine issue of fact." *Id.* If a parent introduces such evidence, the

"presumption is rebutted and has no further function at the trial." *Id.* (quotations omitted). An appellate court reviews a district court's determination as to whether a parent presented evidence sufficient to rebut the presumption of palpable unfitness de novo. *Id.*

We determine that J.B. failed to produce evidence sufficient to overcome the presumption of palpable unfitness. Here, the district court took judicial notice that J.B.'s parental rights to her infant child had been terminated in February 2019. And while J.B. was present at the beginning of the TPR trial, she left after the first break and did not return for the remainder of the trial. She did not present any evidence or testimony that she was suitable to be entrusted with the care of the children. Further, no other parties presented evidence that J.B. was suitable to be entrusted with the care of the children. A child-protection worker testified that J.B. had secured a residence, appeared to have reduced her illicit-substance use, and claimed to have managed her medications. However, there was no evidence that she had addressed parenting skills, made progress toward resolving her mental-health issues, gained employment, or distanced herself from D.J. Therefore, the record supports the district court's determination that J.B. failed to rebut the presumption of palpable unfitness pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4).

Best interests

Next, J.B. argues that the record does not adequately support the district court's finding that TPR is in the children's best interests. The best interests of the child are the "paramount consideration" in a TPR proceeding. Minn. Stat. §§ 260C.001, subd. 2(a) (2018), *see* 260C.301, subd. 7 (2018) (stating that if a statutory basis exists to terminate parental rights under Minn. Stat. § 260C.301, subd. 1, the paramount concern is the

children's best interests). Even if a statutory basis for TPR exists, a district court cannot terminate parental rights unless it is in the best interests of the child. *J.R.B.*, 805 N.W.2d at 905.

"In analyzing the best interests of the child, the court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *J.R.B.*, 805 N.W.2d at 905 (quotation omitted). And when the interests of the parent and those of the child compete, the child's interests are paramount. Minn. Stat. § 260C.301, subd. 7.

The district court's determination that TPR is in the children's best interests is supported by the record. First, with the exception of the youngest child, there was evidence that the children had an interest in preserving their relationship with J.B. Second, while the district court noted that J.B. loved her children, the record reflects that her actions contradicted a wish to maintain her parental rights. J.B. left the trial at the first break and did not express her wish to maintain her parental rights. She had also not addressed the issues that led to instability in her life and she continued to maintain a relationship with D.J., despite his actions that endangered the children.

Finally, the record supports the district court's finding that the children's competing interests weigh in favor of the TPR. There was evidence that prior to their placement in foster care, the children's significant educational and medical needs had not been met.

Following their placement, the children received medical care, social interactions, and formal education. And while the children expressed a wish to maintain their relationship with J.B., their competing interests outweigh this preference. Therefore, the district court did not abuse its discretion because the record adequately supports its finding that TPR is in the children's best interests.

Reunification efforts

Finally, J.B. argues that the district court erred by concluding that reasonable efforts failed to correct the conditions leading to their out-of-home placement. Generally, in a case involving out-of-home placement, a social-services agency is required to make reasonable efforts to facilitate reunification between a parent and child. Minn. Stat. § 260.012(a) (2018); *In re Child of P.T.*, 657 N.W.2d 577, 583-84 (Minn. App. 2003), *review denied* (Minn. Apr. 15, 2003). However, under the statute, the district court can relieve an agency of this obligation when a parent's rights to another child have previously been involuntarily terminated. *See* Minn. Stat. § 260.012(a)(2) ("Reasonable efforts . . . for . . . reunification are always required except upon a determination by the court that a petition has been filed stating a prima facie case that . . . the parental rights of the parent to another child have been terminated involuntarily.").

As a threshold matter, we note that the district court's TPR orders did not include findings about reunification efforts. However, the district court previously relieved the county of its obligation to make reasonable efforts to reunify J.B. and the children. Here, the district court found that the TPR petitions established a prima facie case of palpable unfitness due to the prior involuntary termination of J.B.'s parental rights to her infant

child. Therefore, the district court did not err by not making reunification findings in its TPR orders given that it properly relieved the county of its reunification obligations in this case.

Affirmed.