**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A20-0395**

In the Matter of the Welfare of the Child of:
M. A. M. and M. A. C., Parents.

**Filed August 17, 2020**
**Affirmed**
**Frisch, Judge**

Grant County District Court
File No. 26-JV-19-341

Matthew P. Franzese, Wheaton, Minnesota (for appellants)

Justin Anderson, Grant County Attorney, Marquelle L. Theis-Pflipsen, Assistant County Attorney, Elbow Lake, Minnesota (for respondent Grant County Social Services)

Dawn Krump, Tintah, Minnesota (guardian ad litem)

Considered and decided by Reyes, Presiding Judge; Frisch, Judge; and Kirk, Judge.*

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

**FRISCH**, Judge

Appellants mother and father (collectively, parents) appeal the termination of their parental rights to son and daughter. The district court applied a statutory presumption of palpable unfitness because a court in the State of Washington previously terminated parents' rights to two other children. On appeal, parents argue that the district court

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

(1) erroneously concluded that parents failed to rebut the presumption of palpable unfitness and (2) abused its discretion by finding that termination of parental rights was in the best interests of son and daughter. We affirm.

## FACTS

Because a presumption of palpable unfitness arises from events and proceedings occurring in the State of Washington, we begin by describing the Washington proceedings, which involved two children not at issue in the instant proceedings. We then turn to the Minnesota proceedings.

### *Washington Proceedings*

Parents' first two children were born in 2010 and 2011 and lived with parents in the State of Washington. From 2014 through 2016, the local social services agency received reports that the children were neglected, unbathed, and living in unsafe and unsanitary conditions. On February 16, 2016, the State of Washington removed those two children from parents' care. At the time, parents were homeless, and mother was unable to find employment. On March 31, 2016, a Washington court found the children to be "dependent," meaning that the children were abandoned, abused, neglected, or had no parent or custodian capable of adequately caring for them. *See* Wash. Rev. Code § 13.34.030(6) (2018).

The Washington court ordered—and the Washington Department of Children Youth and Families (the department) offered—drug and alcohol assessments, random urinalysis tests, and psychological evaluations for each parent, as well as a mental-health evaluation for mother. Mother provided two urine samples, both positive for THC, but did

not avail herself of any other services. Father did not participate in any services. The assigned social worker repeatedly attempted to call or meet with parents to help them participate in services. On December 30, 2016, the caseworker found parents at a public location and attempted to persuade parents to engage in services, but mother refused.

In July 2017, parents moved to Minnesota. Mother told the department she needed funding for drug and alcohol services in Minnesota. The caseworker informed mother of the necessary steps to obtain funding and indicated that the State of Washington could pay if the State of Minnesota declined funding. The department did not make any referrals, however, because the caseworker understood that parents still had not attempted to seek funding from the State of Minnesota. Thereafter, the caseworker attempted to maintain contact with parents but had great difficulty reaching them.

In 2018, the Washington court held a three-day termination of parental rights (TPR) trial. On November 26, 2018, the Washington court terminated the parental rights of mother and father as to the two children. At the time, those children lived with mother's brother, two years had elapsed since parents last saw the children in person, and phone visits with parents had also ceased. The Washington court found that the parents had not corrected identified deficiencies and were currently unfit to parent the children. The Washington court also found that parents had effectively abandoned the children by discontinuing in-person and phone visits. The Washington court found that continuation of the parent-child relationship "clearly diminishe[d]" each child's prospect for early integration into a stable and permanent home and that termination of parental rights was in the best interests of each child.

***Minnesota Proceedings***

The proceedings at issue here involve son and daughter, who were each born after parents moved to Minnesota. Son was born in July 2017, and daughter was born in September 2019. On December 3, 2019, respondent Grant County Social Services (the county) received a report that father was a predatory offender, based on an incident that occurred when father was 13. On December 4, 2019, a county social worker had contact with the family at their home. She observed that every time son tried to engage with father, son "would end up running away from his dad screaming." The social worker witnessed son take cigarettes out of a carton and drag around a bag of garbage. The social worker alerted parents to each of these events because parents did not notice son's behavior. The social worker also observed that father was swaying and slurring his words, and she was concerned that he was under the influence of a substance.

On December 10, 2019, the county petitioned to terminate parental rights, and son and daughter were removed from parents' home on an emergency basis. Once in the county's care, son and daughter were taken to a doctor. Assessments revealed that daughter, who was still an infant, suffered from severe neck and head issues that required physical therapy and a cranial helmet. Son tested in the first percentile for speech and cognition, requiring speech and occupational therapy. The assessor determined that son would require long-term developmental services.

When son and daughter entered the county's care, the social worker observed behaviors in son that were unusual for a two-year old. For example, "[t]he first week in

placement he was trying to grab pens and put them in his eyes." The social worker testified that these behaviors gradually improved while son was in the county's care.

Also while son and daughter were in the county's care, parents participated in supervised visits. Mother attended a total of eight visits, and father attended six. Four of the visits were supervised by a contractor retained by the county. The contractor observed that mother exhibited a genuine affection for son and daughter, that son and daughter enjoyed the visits, that mother provided age-appropriate snacks and diapers, and that mother "did a nice job of managing" son and daughter. The contractor also observed both mother and father effectively calming son when he threw a tantrum.

On February 7, 2020, the Grant County District Court held a TPR trial. Several witnesses testified at the hearing. Mother testified that she attempted to obtain a mental-health evaluation after moving to Minnesota and was told that she needed a referral from Washington social services, which the department failed to provide. She also claimed that she tried to set up counseling but was unable to find a counselor with whom she felt comfortable. Father testified that he tried to obtain counseling but did not "feel comfortable with some places." Mother testified that she attempted to set up medical appointments for daughter, but mother did not present any evidence of medical appointments. Mother additionally claimed that daughter did not develop cranial issues until after the county took daughter into its care. Parents testified that son and daughter were left in father's care while mother was at work. Father admitted that when son woke up in the morning, father would give son cereal and leave son in a play area, because father claimed he is not a morning person.

Also at the TPR trial, the social worker testified as to her observations since December 4, 2019, stating that she would be very concerned about the safety and well-being of son and daughter if they were returned to parents, especially given the special needs of son and daughter. The guardian ad litem testified that termination of parental rights would be in son and daughter's best interests. The contractor who supervised four parental visits testified as to her positive observations during the visits but ultimately did not express an opinion as to whether mother or father were able to parent.

The district court found that mother's testimony lacked credibility and that mother ignored son and daughter's serious medical needs. The district court found father's testimony credible but observed that he did not provide any evidence that he is able to care for son and daughter. The only credited evidence parents presented to rebut the presumption of palpable unfitness was the testimony of the contractor who supervised their visitation, but those observations occurred over a total of only a few hours in a controlled environment, and the contractor did not express an opinion regarding parental fitness. Accordingly, the district court found that parents failed to rebut the presumption of palpable unfitness. The district court further found that termination of parental rights would be in the best interests of son and daughter to ensure they would receive care necessary to address their serious developmental issues. Parents appeal.

## D E C I S I O N

### I. The district court did not err by finding parents palpably unfit.

Parents argue that the district court erred as a matter of law by finding that parents did not rebut the statutory presumption of palpable unfitness. A district court may

terminate parental rights upon finding that a parent is palpably unfit to be a party to the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). A parent is presumed to be palpably unfit "upon a showing that the parent's parental rights to one or more other children were involuntarily terminated." *Id.* This presumption "is easily rebuttable. . . . [A] parent needs to produce only enough evidence to support a finding that the parent is suitable to be entrusted with the care of the children." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014) (quotation omitted). When reviewing a parent's evidence, "a district court must determine whether the evidence is sufficient 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). We review whether a parent has rebutted the statutory presumption de novo. *Id.*

Parents argue that they were unable to comply with the Washington case plan because of their poverty and, therefore, the Minnesota district court lacked a basis to presume palpable unfitness. "Mere poverty . . . of the parents is seldom, if ever, a sufficient ground for depriving them of the natural right to the custody of their child or children, to say nothing of the statutory right." *In re Dependency of Klugman*, 97 N.W.2d 425, 430 (Minn. 1959).

The record does not support parents' contention that poverty was the sole basis for their noncompliance with the Washington case plan. According to parents' own testimony, their inability to obtain services was at least in part related to their personal difficulties in seeking assistance. While we recognize the challenges identified by parents in obtaining services, the record shows that help was available to parents notwithstanding their poverty

and that parents chose not to accept the assistance offered to them. The Washington court found that the department attempted to contact parents numerous times and even sought parents out in a public location, but mother declined to speak with the social worker and refused services.

Parents argue that once they moved to Minnesota, the department could have taken action and "the funding would have come" to enable parents to receive services. But the Washington court expressly found that parents never completed the instructions to obtain funding for services in Minnesota. And the record shows that even while parents remained in the State of Washington—for over one year after the Washington court ordered services—parents still did not accept services.

Parents also argue that the district court erroneously relied on evidence of their chemical-dependency issues without finding that those issues affected son and daughter. But the district court credited testimony from the social worker who observed that father appeared impaired during the December 4, 2019 home visit and that neither father nor mother noticed son removing cigarettes from a carton or dragging around a bag of garbage during that visit. The district court made several other findings relevant to parenting, including that son exhibited unusual and unsafe behaviors shortly after being in parents' care, that parents failed to set up necessary medical appointments even though they were aware that both son and daughter have special needs, and that son was essentially left on his own while in father's care.

In summary, parents do not cite any record evidence that creates a genuine issue of fact as to the issue of palpable unfitness. We see no error by the district court in determining that parents failed to rebut the presumption of palpable unfitness.

## II. The district court did not abuse its discretion by finding that termination of parental rights was in the best interests of son and daughter.

Parents also argue that the district court abused its discretion by finding that termination of their parental rights was in the best interests of son and daughter. "If, after a hearing, the court finds by clear and convincing evidence that one or more of the conditions set out in section 260C.301 exist, it may terminate parental rights." Minn. Stat. § 260C.317, subd. 1 (2018). "[T]he best interests of the child must be the paramount consideration," provided that the district court finds palpable unfitness or one of the other conditions set forth in section 260C.301. Minn. Stat. § 260C.301, subd. 7 (2018). "[Appellate courts] review a district court's ultimate determination that termination is in a child's best interest 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). "The district court is the exclusive judge of credibility." *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012).

Clear and convincing evidence supports the district court's finding that termination of parental rights was in the best interests of son and daughter. The district court found that son and daughter have serious physical and developmental needs that were unaddressed while in parents' care. The district court further found that termination of parental rights was necessary to ensure those needs are met and that son and daughter have

a safe home. Parents argue that the district court abused its discretion but cite no legal authority or record evidence to support their assertion. Parents contend that they obtained housing one month before the court terminated parental rights and that the evidence did not show that son and daughter were abused or neglected or did not attend regular medical appointments. But the district court did not terminate parental rights based on parents' housing situation and in fact noted that parents' housing and employment situation had improved. As to physician visits, we defer to the findings by the district court that mother's testimony that she set up medical appointments was not credible and concluding that mother "had not addressed [son and daughter's] serious medical needs." In light of the significant and unaddressed needs of the children, the district court did not abuse its discretion in concluding that termination of parental rights was in the best interests of son and daughter to ensure they receive the care they need and have a safe and stable home.

**Affirmed.**