STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0498
A20-0501

In the Matter of the Welfare of the Child of: M. J. K. and J. W. L., Parents.

Filed October 5, 2020
Affirmed
Larkin, Judge

Olmsted County District Court
File No. 55-JV-19-6437

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Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

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

LARKIN, Judge

In these consolidated appeals from the district court's order terminating parental rights, appellant-parents argue that the district court erred by (1) applying a presumption

of palpable unfitness, (2) failing to independently examine the record, (3) finding that the county made reasonable reunification efforts, and (4) finding that termination of parental rights is in the child's best interests. We affirm.

FACTS

Appellant-mother M.J.K. and appellant-father J.W.L. are the parents of L.K.L., born in September 2018. Mother has four other children, including one with father. None of mother's children are in her care. Her parental rights to all of her other children were terminated either voluntarily or involuntarily in 2008, 2011, 2012, and 2014. The primary grounds for the terminations were mother's lack of capacity to parent, exposure to domestic violence, unstable housing, lack of steady income, and lack of support. Two of mother's children were removed from the home because of neglect, failure to thrive, and developmental delays. Mother has a history of suicidal ideation, persecutory ideation, and difficulty with family members.

Father has three other children, including one with mother. His parental rights to those children were involuntarily terminated in 2013 and 2014. The bases for the terminations were the children's significant developmental delays, their exposure to domestic violence, and one child's significant dental issues.

In October 2018, Olmsted County Health, Housing, and Human Services (the county) filed a petition for termination of both parents' parental rights (TPR) to L.K.L. based upon the parents' prior involuntary terminations. In May 2019, following a trial, the district court ruled that the parents had rebutted a presumption of palpable unfitness arising from the prior terminations and that the county failed to otherwise prove the grounds for

termination alleged in the petition.[1] The district court denied the petition and ordered the county to conduct parenting evaluations and continue reunification efforts. The county moved for amended findings or a new trial, but the district court denied the motion.

In June 2019, the parents underwent evaluations with a psychologist, who concluded that neither parent had the capacity to independently care for the child. The psychologist "strongly recommended" that a supportive caregiver, approved by the county, be present in the home to provide parenting support "at all times."

In September 2019, the county again petitioned to terminate the parents' parental rights, asserting that they were palpably unfit. The matter proceeded to trial.

At trial, the psychologist testified regarding her evaluations of mother and father. She diagnosed mother with generalized anxiety disorder and borderline intellectual functioning.[2] She observed mother interact with the child for an hour and did not have concerns based upon that observation, but she identified a number of safety concerns based upon collateral sources and records, such as overflowing shelves above the crib and a failure to consistently use the child's car seat correctly.[3] The collateral sources also

[1] Our understanding of the district court's ruling is based on the parties' arguments and statements in the record, which does not include a copy of the district court's order from the first trial.

[2] Mother was prescribed medication for her anxiety disorder, but she had been taking cannabidiol (CBD) oil instead of her medication.

[3] The psychologist relied on photographs of the crib that were offered by the parents. The psychologist opined that it was significant that the safety hazards were present in the parents' photographs, which were presented to frame their home environment in a positive light.

indicated that mother failed to consistently recognize the child's cues and needs during visitation.

The psychologist identified mother's strengths as employment, a long period without exposure to domestic violence, compliance with services, and a valid driver's license. She identified mother's risks as her history of terminations and exposure to domestic violence, "an incident of stealing within the past year," low cognitive ability, defensiveness, and lack of parenting consistency. Based on the risks, the psychologist worried that "something big" might happen. The psychologist recommended that a supportive person be with mother at all times when she is parenting.

The psychologist diagnosed father with borderline intellectual functioning. She noted, based on prior records, concerns with father "recognizing and meeting basic needs and cues, communicating, and knowledge of basic skills." But there was limited information regarding father because "he was working or just not able to come" to many of the visits. The psychologist listed father's strengths as stable employment and housing, a long period without engaging in domestic violence, and compliance with services. Father's risks included his history of domestic violence, past terminations, and "cognitive weaknesses." The psychologist observed father interact appropriately with the child but had concerns about his ability to consistently provide proper care over time. As with mother, the psychologist recommended that a parenting support person be with father at all times when he is parenting.

A child-protection worker testified that she was concerned regarding the parents' ability to keep the child safe. She testified about the parents' inability to properly secure

the child in his car seat. She also described an incident in which mother placed the child in his car seat "about three feet from the bumper of her car where there was an additional parking spot" and this placement "would have been kind of blind to incoming cars coming into that lot." While the child was in this dangerous place, mother "turned her back several times to load her car."

The child-protection worker testified that mother had three visits per week with the child and father had one visit per week. She testified that father was given the opportunity for additional visits, but he failed to contact the coordinator to set up those extra visits. The child-protection worker testified that the parents were unable to meet the child's basic needs, and she specifically testified about the parents' inability to budget for the child's needs. The child-protection worker opined that it was in the child's best interests for parental rights to be terminated.

A social worker testified about supervised visitation. She reported several concerns, including mother's use of the car seat, stating that on several occasions mother left the straps too loose. On another occasion, mother gave the child a gift that could have been a choking hazard. The social worker also noted concerns regarding mother's inability to remember the amount of powder formula to add to a bottle and her inability to read the child's cues and meet the child's daily needs, noting that mother continually needed guidance during visits. The social worker testified that father was better able to read the child's cues, but he had limited visits with the child.

A second social worker also testified about mother's difficulties making bottles and with the car seat. In addition, that social worker testified that the child found a choking

hazard on the floor, put it in his mouth, and mother did not notice. Another time mother tightened the car seat straps such that the "chest clamp" was at the child's throat. The child began choking, and mother did not notice. The second social worker observed fewer visits with father, but felt that he was less bonded to the child than mother.

The guardian ad litem (GAL) echoed the concerns regarding mother's inability to recognize the child's cues. The GAL described father as very quiet and noted that he often did not engage the child verbally. The GAL thought that it was not "realistic and tenable" to have a 24-hour support person "for the next ten plus years," but she believed that such support was necessary. The GAL opined that it was in the child's best interests for the parents' parental rights to be terminated.

A public-health nurse testified that she had seen improvement in mother's parenting but still had concerns about her ability to keep the child safe. The nurse also had concerns regarding the parents' moods because they were ambivalent at times. The nurse testified regarding an incident in which mother brought a dirty car seat for the child that "smelled very smoky," was infested with baby spiders, and had corroded pieces. The parents bought the car seat from a friend because it had a camouflage pattern. Mother later obtained a new, appropriate car seat. The nurse did not observe any visits between father and the child.

Father testified that he is employed as a garbage-truck driver. He testified that he did not seek additional visitation with the child because he was unsure of the availability of transportation. He indicated that his mother or brother, or mother's grandfather, could

provide 24-hour parenting supervision, but he was unable to specify how such an arrangement would work. Mother did not testify.

The parents raised a res judicata argument at trial and in a posttrial memorandum of law. They asserted that because they had rebutted the presumption of palpable unfitness at the first trial, the county was "barred from asserting this same basis to support a TPR" at the second trial. In March 2020, the district court filed an order terminating the parents' parental rights. The court found the testimony of the psychologist, social workers, nurse, and GAL credible. The court found that neither parent had overcome the presumption of palpable unfitness stemming from the prior involuntary TPRs. The court further found that, regardless of the presumption, both parents had shown, "over an extended period of time," that they lack the capacity to consistently care for the child. The court also found that the county had made reasonable efforts to reunite the family and that termination of parental rights was in the child's best interests. Both parents appealed, and the appeals were consolidated.[4]

D E C I S I O N

I.

The parents argue that the district court erred by applying a presumption of palpable unfitness and by finding that the county presented clear and convincing evidence to support termination of their parental rights.

[4] Father filed a letter with this court indicating that he would rely on mother's brief and had "nothing further to add." By order of July 9, 2020, in the interest of judicial economy, we construed mother's brief as the parties' joint brief.

A district court may involuntarily terminate parental rights if, among other things, it finds by clear and convincing evidence that a statutory basis for termination exists. Minn. Stat. § 260C.317, subd. 1 (2018). One statutory ground for termination is that the parent is palpably unfit to be a party to the parent-child relationship. 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 . . . [.]" *Id.*

The statutory presumption is a rebuttable presumption that shifts the burden of production to the parent. *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 parent must produce evidence that could support a finding that the parent is suitable to be entrusted with the care of the child. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). If the parent introduces such evidence, then the "presumption is rebutted and has no further function at the trial." *J.A.K.*, 907 N.W.2d at 246 (quotations omitted). Whether a parent's evidence satisfies the burden of production must be determined on a case-by-case basis. *Id.* We apply a de novo standard of review to the district court's determination as to whether the parent presented evidence sufficient to rebut the statutory presumption. *Id.*

The parents argue that "the district court erroneously applied a presumption of palpable unfitness" because "[a]ll four prongs of res judicata are present here." Res judicata, also referred to as claim preclusion, seeks to avoid wasteful litigation so that a party may not be sued twice for the same cause of action. *Breaker v. Bemidji State Univ.*, 899 N.W.2d 515, 518-19 (Minn. App. 2017). "Whether res judicata is available in a

particular case is a question reviewed de novo."[5] *Sanvik v. Sanvik*, 850 N.W.2d 732, 737 (Minn. App. 2014). For res judicata to apply, the following four elements must be met: "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; and (4) the estopped party had a full and fair opportunity to litigate the matter." *Id.* (quotation omitted). However, even if all four elements are met, the decision to apply res judicata "is left to the [district] court's discretion." *Dixon v. Depositors Ins. Co.*, 619 N.W.2d 752, 755 (Minn. App. 2000).

For two reasons, the district court did not err by refusing to apply the doctrine of res judicata to bar application of the presumption of palpable unfitness. First, new facts arose following the denial of the first TPR petition, most notably, the parenting evaluations and additional safety concerns that arose during visits. Thus, the earlier claim did not involve the same set of factual circumstances. *See Sanvik*, 850 N.W.2d at 737.

Second, application of the doctrine in juvenile-protection matters is limited and discretionary. *See Loo v. Loo*, 520 N.W.2d 740, 743-44 (Minn. 1994) (discussing how changing circumstances, inherent in family law matters, limit the applicability of collateral

[5] "Res judicata is distinct from collateral estoppel, also known as issue preclusion, which precludes a party from relitigating an *issue* that was decided in a prior lawsuit between the same parties involving a different cause of action." *Breaker*, 899 N.W.2d at 519 n.3 (quotation omitted). Although the parents specifically base their argument on the doctrine of res judicata and cite caselaw regarding claim preclusion, they assert that the "*[i]ssue* of palpable unfitness should have been precluded under the doctrine of res judicata." (Emphasis added.) We therefore question whether the parents' argument raises a question of issue preclusion, and not claim preclusion. We nonetheless address the question as one of claim preclusion, consistent with the parties' briefing.

estoppel); *Maschoff v. Leiding*, 696 N.W.2d 834, 838 (Minn. App. 2005) ("[T]he availability and application of res judicata and collateral estoppel in family matters is limited . . . ."). Moreover, the doctrine may be rejected when its application would contravene an overriding public policy. *See AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 299 (Minn. 1984) (stating that collateral estoppel and res judicata "are qualified or rejected when their application would contravene an overriding public policy" (quotation omitted)). The statutory presumption of palpable unfitness "directly serves the compelling government interest of protecting" children. *R.D.L.*, 853 N.W.2d at 135. Res judicata is not favored in this case given the public policy favoring the presumption of palpable unfitness in juvenile-protection matters. Thus, even if the doctrine could have been applied in this case, not applying it was well within the district court's discretion. *See Dixon*, 619 N.W.2d at 755.

The parents also argue that the district court erred by finding clear and convincing evidence of palpable unfitness. That argument appears to be based on the parents' conclusion that the district court erroneously applied the presumption of palpable unfitness. But the district court did not err by applying the presumption, and the parents offered little evidence to rebut it. For example, they did not offer evidence to refute the need for 24-hour parenting supervision as recommended by the professionals. Based on our review of the record, we conclude, de novo, that the parents did not meet their burden to rebut the presumption of palpable unfitness by producing evidence that could support a finding that they are suitable to be entrusted with the care of the child. Thus, the district court did not

err in terminating their parental rights based upon the unrebutted presumption of palpable unfitness.

II.

The parents argue that by adopting the "majority" of the county's proposed findings and conclusions, the district court committed reversible error because it failed to conduct an independent analysis. The Minnesota Supreme Court has declined to adopt a blanket prohibition on the practice of adopting proposed findings. *In re Children of T.A.A.*, 702 N.W.2d 703, 707 n.2 (Minn. 2005). Additionally, the parents do not assert that any of the findings are erroneous, and they do not identify any prejudice justifying reversal. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (stating that an appellant must show both error and prejudice to prevail on appeal). This argument therefore does not provide a basis to reverse.

III.

The parents challenge the district court's finding that the county made reasonable reunification efforts. The termination statute requires "specific findings" in every TPR proceeding "that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made" or "that reasonable efforts for reunification [were] not required" as set out in Minn. Stat. § 260.012 (2018). Minn. Stat. § 260C.301, subd. 8 (2018). The district court must make "individualized and explicit findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family." *Id.*, subd. 8(1).

In determining whether the county made reasonable efforts, the district court must consider whether the county offered services that were "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances." Minn. Stat. § 260.012(h). We review a district court's finding that reasonable efforts were made for clear error. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012).

The district court found that the county made reasonable efforts to correct the conditions that led to the child's out-of-home placement by providing gas, food, and clothing vouchers; transportation; case management; foster care; respite care; psychological and parenting assessments; a public-health nurse; and parenting coaches during supervised visitation.

The parents acknowledge that they were provided the aforementioned services, but they argue that they were not allowed to parent within their home until after the second TPR petition was filed. However, they ultimately had the opportunity to parent in the home, and the district court's findings show they continued to lack the skills necessary to provide a safe environment and meet their child's needs. On this record, the district court's finding that the county's efforts were reasonable is not clearly erroneous.

IV.

The parents argue that the district court erred in concluding that termination of parental rights is in the child's best interests. A district court cannot terminate parental rights unless it is in the best interests of the child. *In re Welfare of Children of J.R.B.*, 805

N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "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). We review the district court's determination that termination is in the child's best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

Generally, a court presumes that it is in the best interests of the child to be in the custody of the parents. *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980). Nevertheless, the child's competing interests include a stable environment. *R.T.B.*, 492 N.W.2d at 4. In balancing the three factors, "the interests of the parent and child are not necessarily given equal weight." *Id.* "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2018).

Here, the district court determined that termination of the parents' parental rights is in the child's best interests after balancing the three relevant factors. As to the first factor, the district court noted that the child recognized the parents as "important people in his life who love him," but found that the child was not "attached" to his parents. As to the second factor, the district court recognized that the parents love the child and "want him to come home." But as to the third factor, the district court reasoned that competing interests of the child controlled. The district court reasoned that the child deserved "caregivers who can read his cues, keep him safe, stimulate him, and ensure that all of his needs are consistently

met over time," and that the parents, despite their best efforts, are incapable of providing this level of care.

There is no basis for this court to reverse the district court's discretionary best-interests determination. *See J.R.B.*, 805 N.W.2d at 905-06 (concluding that the district court did not abuse its discretion when it correctly applied the law, and the evidence supported its determination).

Affirmed.