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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0546
A20-0556

In the Matter of the Welfare of the Child of:
I. M. K. and C. M. S., Parents.

Filed September 8, 2020
Affirmed
Smith, Tracy M., Judge

Morrison County District Court
File No. 49-JV-19-949

Kimberly Stommes, St. Cloud, Minnesota (for appellant-mother I.M.K. (A20-0546))

Cathleen Gabriel, Annandale, Minnesota (for appellant-father C.M.S. (A20-0556))

Brian Middendorf, Morrison County Attorney, Kristyna Stavish, Assistant County Attorney, Little Falls, Minnesota (for respondent Morrison County Social Services)

Amanda Rakow, Little Falls, Minnesota (guardian ad litem)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

In these consolidated appeals, both appellant-mother I.M.K. and appellant-father C.M.S. challenge the district court's order terminating parental rights to their child. Mother argues that the district court erred by concluding that she failed to overcome the presumption of palpable unfitness to parent and by determining that terminating mother's

parental rights is in the child's best interests. Father argues that the district court erred by failing to make adequate findings to support its determination that another child suffered egregious harm in father's care, by determining that the county did not need to make reasonable efforts to reunite father and child, and by determining that terminating father's parental rights is in the child's best interests. We affirm.

FACTS

Mother and father are the biological parents of A.M.S., who was seven months old at the time of the termination-of-parental-rights (TPR) trial in this matter. One month before A.M.S. was born, mother's parental rights to her other biological child, E.J.K., were terminated.[1] E.J.K. had been hospitalized when he was eleven months old due to abusive injuries caused by father, who is not E.J.K.'s biological parent but provided care for him. E.J.K.'s injuries included over a dozen bruises at various stages of healing, two wrist fractures, and a bloody lip.

In the TPR matter regarding E.J.K., the district court found that father's acts against the child constituted egregious harm. Father was also criminally charged with and convicted of felony malicious punishment of a child in connection with E.J.K.'s injuries. As to mother, the district court found that she refused to acknowledge father's actions as abusive, despite admitting that she had observed father spank and slap E.J.K. on multiple occasions and that she at times needed to intervene. Mother testified at the TPR trial

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[1] We affirmed the termination of mother's parental rights to E.J.K. in *In re Welfare of Child of I.M.K.*, No. A19-0945, 2019 WL 6285909 (Minn. App. Nov. 25, 2019), which contains more factual background.

involving E.J.K. that she would continue her relationship with father and that she believed him to be a safe caregiver for young children. The district court ultimately determined that mother was unable to keep E.J.K. safe, and it concluded that the statutory bases for termination in Minn. Stat. § 260C.301, subd. 1(b)(2), (4) and (6) (2018), were satisfied and that termination of her parental rights was in E.J.K.'s best interests.

In light of the matter involving E.J.K., the county initiated a child-maltreatment assessment the day that A.M.S. was born. When a child-protection social worker spoke with mother and father at the hospital, the parents were upset because they had planned to execute a power of attorney to attempt to transfer custody of A.M.S. to father's relatives. A.M.S. was immediately placed on a 72-hour law-enforcement hold and has been in continuous out-of-home placement since his birth.

On July 12, 2019, two days after A.M.S.'s birth, the county filed a petition seeking the expedited termination of both father's and mother's parental rights to the child. The matter eventually proceeded to trial on February 24, 2020.[2]

At trial, mother testified that, since the termination of her parental rights to E.J.K., she had gained employment at a forestry products company. She testified that she had also attended therapy for four months but had stopped attending because of her job. Mother stated that the therapy sessions addressed her emotions, grief, and how "to better [her]self for the kids." Mother testified that she is no longer romantically involved with father. She stated, however, that she was still living with him in a one-bedroom apartment. Mother

[2] The trial was initially scheduled for December but was continued pending the resolution of father's criminal matter in the malicious-punishment case.

maintained her position that father would be a safe person to have around young children and stated that she does not agree with the jury's verdict of felony malicious punishment in father's criminal case. When asked how she would keep A.M.S. safe, mother responded that she would "take care of him" and be there to "feed him, play with him, [and] keep him clean."

When mother's testimony concluded, the district court heard arguments on whether mother had produced sufficient evidence to overcome the presumption of palpable unfitness to parent that had resulted from the previous TPR. The district court determined that mother had not overcome the presumption and asked which witness would be called next. Mother's attorney then requested that he and mother be excused because, he said, the trial was "essentially over," and they exited the courtroom.

Father and several other witnesses then testified. Father said he is employed with a tree service and landscaping company. After A.M.S. was born, he asked the county for visitation with the child, but the county denied his request. Father did not receive or request any services or assessments from the county. Like mother, father said he disagrees with the jury's verdict in the criminal matter. When asked whether he had made any "substantial changes" in his life since the time of the conduct giving rise to the malicious-punishment charge, father replied that he has not. He went on to state, though, that he had made a change in that he and mother no longer were living with mother's parents.

The county social worker who was the case manager for both E.J.K's. and A.M.S.'s cases testified that he would be concerned for A.M.S.'s safety if A.M.S. were to live with mother and father, especially because A.M.S. is similar in age to E.J.K. when E.J.K.

experienced abuse. The social worker testified that he does not believe that there would be any benefit in preserving the parent-child relationship between father and A.M.S. because there is no established relationship and because the safety concerns are significant.

A.M.S.'s initial guardian ad litem (GAL), Courtney Rannow, testified. Rannow explained that she had also served as GAL for E.J.K. Rannow explained that during E.J.K.'s case, mother minimally complied with her case plan. Mother visited E.J.K., but she did not attend therapy and maintained her relationship with father, denying that he had abused E.J.K. despite the county's maltreatment determination. Rannow expressed significant safety concerns for A.M.S. if he were to be placed with father and explained that her concern with mother is that mother has maintained a relationship with father and has not acknowledged the harm that he caused to E.J.K. Rannow concluded that terminating father's parental rights to A.M.S. is in the child's best interest because of the child's young age and vulnerability.

A.M.S.'s current GAL, Amanda Rakow, also testified. Rakow said that she had been appointed only a few days before the TPR trial but that she had been observing A.M.S. in his foster home for several months prior when she visited another child there. She explained that A.M.S. is in a developmental stage where safety is especially important. Based on her review of the file, she also recommended that termination of father's parental rights would be in A.M.S.'s best interests.

Following the testimony on February 24, the district court held another hearing, upon the county attorney's request, to allow mother to question the current GAL and to address the best interests of the child. Rakow testified again and stated that she does not

believe that mother would be able to provide a safe and stable living arrangement for A.M.S. Rankow testified that she does not believe mother has remedied the issues that led to the previous termination of parental rights since mother continues to reside with father. She concluded that termination of mother's parental rights is in the best interests of A.M.S., again primarily based upon safety concerns.

The district court granted the county's petition and issued its order terminating mother's and father's parental rights on March 19, 2020.[3] It concluded that mother had not overcome the presumption of palpable unfitness to parent and that it was in A.M.S.'s best interests to terminate mother's parental rights. It also concluded that father had caused egregious harm to a child in his care and that termination was accordingly warranted under Minn. Stat. § 260C.301, subd. 1(b)(6), and that it was in A.M.S.'s best interests to terminate father's parental rights.

Each parent appealed, and this court consolidated the appeals.

D E C I S I O N

Parental rights should be terminated only for "grave and weighty reasons." *In re Child of P.T.*, 657 N.W.2d 577, 591 (Minn. App. 2003) (quotation omitted), *review denied* (Minn. Apr. 15, 2003). To terminate parental rights, there must be clear and convincing evidence that at least one statutory basis for termination exists, and the termination must be in the best interests of the child. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381,

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[3] The district court issued an amended order on March 23, 2019, which changes only a reference to where the appeals rules are found within the Minnesota Rules of Juvenile Protection Procedure.

385 (Minn. 2008). "[T]ermination of parental rights is always discretionary with the [district] court." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). Appellate courts review the district court's factual findings that a statutory ground for termination of parental rights exists for clear error. *In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995). We review the district court's decision that termination is in a child's best interests for an abuse of discretion. *In re Welfare of Children of D.F.*, 752 N.W.2d 88, 95 (Minn. App. 2008).

I. The district court did not err when it concluded that mother failed to overcome the presumption of palpable unfitness to parent.

A natural parent is typically presumed fit to care for his or her child. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003). But "[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 the presumption of palpable unfitness to parent 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 the presumption must only "create a genuine issue of fact on the issue of palpable unfitness." *Id.* If a parent produces sufficient evidence, the "presumption is rebutted and has no further function at the trial." *Id.* (quotations omitted). If the presumption is not rebutted, the statutory ground of palpable unfitness is established.

See In re Welfare of Child of J.W., 807 N.W.2d 441, 445-46 (Minn. App. 2001), *review denied* (Minn. Jan. 6, 2012). Appellate courts review de novo a district court's determination as to whether a parent presented evidence sufficient to rebut the presumption of palpable unfitness. *J.A.K.*, 907 N.W.2d at 246.

Mother argues that she presented sufficient evidence to rebut the presumption of palpable unfitness because she testified that she gained employment, attended therapy, and is no longer in a romantic relationship with father. She also argues that the district court should not have focused on the harm that father caused to E.J.K because father was not a party to the previous TPR proceeding and had not yet been criminally convicted when the previous TPR trial occurred.

In the previous termination matter, the district court determined that mother was palpably unfit to parent primarily because she would not protect her child from abuse by father, and this court affirmed the district court's decision. *I.M.K.*, 2019 WL 6285909 at *3. Here, mother had the burden to produce evidence that would justify a finding that she is not palpably unfit to parent the child. *J.A.K.*, 907 N.W.2d at 246. To do so, she offered only her own testimony, which was quite brief—her direct examination spans less than three pages of trial transcript. Although she testified that she is employed and attended therapy for a few months, she did not explain how these facts relate to her ability to parent the child and keep him safe. She did not enter any exhibits and did not call any witnesses to testify on her behalf. Critically, mother acknowledged that she continues to reside with father, and she continued to deny that he caused harm to E.J.K. Mother accordingly did not produce evidence that she has remedied the safety issue that led to the previous termination

of her parental rights. Under these circumstances, the district court did not err by determining that mother did not meet her burden of producing sufficient evidence to support a finding that she is fit to care for the child. *See id.*

Mother's argument regarding the district court's reliance on father's criminal conviction is also unavailing. She essentially argues that the presumption should have been more easily rebutted because it was father—not she—who harmed the other child and the evidence against father was weak. But the district court in the previous termination proceeding found that father caused egregious harm to E.J.K. and that mother refused to acknowledge that harm and protect the child, and this court affirmed the district court's decision. *I.M.K.*, 2019 WL 6285909 at *3. That father was not criminally convicted until after the previous termination is of little consequence here. It was mother's burden in this case to overcome the presumption of parental unfitness, and the district court properly determined that she had not done so.[4]

II. The district court did not abuse its discretion by determining that terminating mother's parental rights is in the child's best interests.

Mother also argues that the district court abused its discretion by finding that termination of her parental rights is in the child'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. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn.

[4] Mother makes a separate argument in her appellate brief that the evidence was insufficient to support a statutory basis for termination of her parental rights. But because the district court relied solely on mother's failure to rebut the presumption of parental unfitness to parent as the statutory basis for termination, we need only analyze whether she rebutted the presumption.

App. 2011), *review denied* (Minn. Jan. 17, 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). "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). If the interests of the parent and those of the child compete, the child's interests are paramount. 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." *J.R.B.*, 805 N.W.2d at 905. "[D]etermination of a child's best interests 'is generally not susceptible to an appellate court's global review of a record,' and . . . 'an appellate court's combing through the record to determine best interests is inappropriate because it involves credibility determinations.'" *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quoting *In re Tanghe*, 672 N.W.2d 623, 625 (Minn. App. 2003)).

Mother argues that the evidence does not support the district court's determination that termination of her parental rights is in the best interest of the child because "[t]he only testimony provided was that the GAL felt that [mother] had not changed anything since her last termination, despite [mother's] testimony to the contrary." Mother also argues that the district court erred by failing to make specific findings regarding the conditions related to the parent-child relationship that have not been corrected. She asserts that, in the absence of any findings of harmful effects on A.M.S., the district court's decision must be reversed.

The child's current GAL, Rakow, testified that she does not believe mother can provide a safe and stable living arrangement for him. Rakow said that she does not believe mother has remedied the issues that led to the very recent, previous termination of parental rights because mother continues to reside with father. Rakow's recommendation that termination was in the child's best interests was primarily based on safety concerns in light of the significant abuse suffered by E.J.K. The district court found Rakow's testimony credible.

Although the district court did not specifically state, in connection with the best-interests analysis, that the safety concerns leading to the prior termination had not been corrected, it is clear that that the district court concluded that the interest in the child's safety outweighed mother's interest in preserving the parent-child relationship. The district court made numerous findings related to the child's best interests, and these findings are supported by the evidence in the record. Especially in light of mother's persistent refusal to acknowledge the safety concerns regarding father, the district court did not abuse its discretion by determining that termination was in the child's best interests.

III. The evidence is sufficient to show that a child suffered egregious harm in father's care.

Father argues that the evidence is insufficient to support the district court's determination that a statutory basis—specifically, the basis related to egregious harm—exists to terminate his parental rights.

The district court terminated father's parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(6), which provides that termination is appropriate if the district court finds

> that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care.

"Egregious harm" is statutorily defined as "the infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care." Minn. Stat. § 260C.007, subd. 14 (2018). The statute specifies that egregious harm includes "conduct towards a child that constitutes felony malicious punishment of a child under section 609.377." *Id.*, subd. 14(3).

Father first contends that the district court did not make specific findings regarding the "nature," "duration," and "chronicity" of his conduct. Instead, he argues, it merely relied on the allegations in mother's previous TPR case to support its findings, which was an error because he was not a party to that proceeding.

It is true that the district court did not explicitly address the "nature," "duration," and "chronicity" of father's conduct against E.J.K. But the district court referenced the findings of fact, conclusions of law, and order from mother's previous TPR trial, which was admitted as an exhibit without objection at this trial. And the findings from that case include many details that relate to the nature, duration, and chronicity of the conduct, including that E.J.K. was hospitalized in January 2019 with numerous bruises in various stages of healing, two wrist fractures, and a bloody lip. The district court found that father

had been abusing E.J.K. for approximately two months before the hospitalization occurred. Father contends that the findings from the previous case cannot be used against him in this one, but he cites no rule or caselaw for that proposition, and he did not object to entry of the earlier findings at trial. He accordingly has not shown error by the district court in relying on the previous termination matter.

Father also argues that the district court "dealt with [him] as though he had already been convicted" from the time the county filed the TPR petition in July 2019 until he was convicted of felony malicious punishment of a child in December 2019. He states that this is evidenced by the district court's postponement of the TPR trial until the criminal matter was resolved.

As the county notes, the child-protection matter proceeded separately from the criminal matter and a determination of egregious harm had already been made in the child-protection sphere when the termination petition in this case was filed. That father had not yet been found guilty in the criminal matter at the time of the petition did not negate the safety concerns that the county had for the child. And, as to the ordering of the criminal trial and the TPR trial, Minn. Stat. § 260C.503, subd. 2(c) (2018), permits the county attorney to determine which proceeds first, so the sequence here does not suggest any error.

In sum, father has not demonstrated that the timing of the resolution of his criminal matter undermines the district court's finding that he caused egregious harm to a child in his care. The evidence amply supports the district court's determination that father caused such harm and that the statutory basis for termination in Minn. Stat. § 260C.301, subd. 1(b)(6) is met.

IV. The district court did not err by determining that the county did not need to make reasonable efforts to reunite father with the child.

Father next argues that the district court erred by determining that the county did not need to make reasonable efforts to reunite him and the child.

In a TPR proceeding, the district court must find "(1) that reasonable efforts to finalize the permanency plan to reunify the child and the parent were made . . . or (2) that reasonable efforts for reunification are not required as provided under section 260.012." Minn. Stat. § 260C.301, subd. 8(1)-(2) (2018). Under Minn. Stat. § 260.012 (2018), reasonable efforts are not required "upon a determination by the court that a petition has been filed stating a prima facie case that . . . the parent has subjected a child to egregious harm." Minn. Stat. § 260.012(a)(1).

Here, the district court relieved the county of efforts to reunify father and A.M.S. at the emergency protective care hearing held July 15, 2019. The petition in this matter describes in significant detail the child-protection matter involving E.J.K., including the harm inflicted by father. The district court in that matter specifically found that father had caused egregious harm to E.J.K. The petition in this matter accordingly states at least a prima facie case that father caused egregious harm to a child.

Father contends the county should nonetheless have provided him services, but he cites no rule, statute, or case law to support that proposition. On appeal, it is his burden to show error by the district court. *See, e.g.*, *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999). We conclude that father has not shown how the district court erred by

determining that the county did not need to make reasonable efforts to reunite him and the child.

V. The district court did not abuse its discretion when it determined that terminating father's parental rights is in the child's best interests.

Lastly, father argues that the district court abused its discretion by determining that termination of his parental rights is in the best interests of the child.

Father challenges the testimony of the social worker and the GALs that termination is in the child's best interest. He contends that their conclusions were based primarily on their assessment that the relationship between him and A.M.S. is not worth preserving because it does not exist, and that such reasoning is unfair because the reason the relationship does not exist is because he has not been permitted to visit A.M.S. He also argues that he was unfairly faulted for not participating in domestic-violence or anger-management programming when the county did not "provide or allow" services to him.

The county responds that, contrary to father's assertions, nothing prohibited father from attending therapy, anger management programming, or parenting classes. He could have done any of these things between the time the child was born and when the trial took place, but he did not do so. The county argues that because father did not demonstrate that he could provide safety for the child, and because he has not yet taken responsibility for the harm to E.J.K., safety concerns ultimately override father's desire to parent A.M.S.

The district court weighed permissible considerations in determining the best interests of the child. The overriding concern was for the safety of the child, and a social worker and both GALs testified that they believed the child would be unsafe with father.

The district court found their testimony credible, and we afford great deference to a district court's credibility determinations in its best-interests analysis. *See S.E.P.*, 744 N.W.2d at 385; *D.L.D.*, 771 N.W.2d at 546. Father has not shown that the district court abused its discretion by determining that termination of his parental rights is in the child's best interests.

Affirmed.