This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0029

In the Matter of the Welfare of the Children of:
B. A. F., T. A. L., A. J. S., Parents.

Filed July 12, 2021
Reversed and remanded
Ross, Judge

Swift County District Court
File No. 76-JV-20-305

John E. Mack, New London, Minnesota (for appellant-mother B.A.F.)

John W. Mueller, Litchfield, Minnesota (for respondent-father T.A.L.)

Dawn Michelle Weber, New London, Minnesota (for respondent-father A.J.S.)

Danielle H. Olson, Swift County Attorney, Shawn C. Reinke, Assistant Swift County Attorney, Benson, Minnesota (for respondent Swift County Human Services)

Susan Nelson, Kerkhoven, Minnesota (guardian ad litem)

Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Swift County placed B.A.F.'s children in emergency protective care after discovering two of them staying in a known drug house and after one of them tested positive for methamphetamine. B.A.F. appeals from the district court's order involuntarily terminating her parental rights to her three children. Because the district court applied the

wrong burden of proof and made no finding as to whether B.A.F. is palpably unfit to parent, we reverse and remand.

FACTS

Only a cursory description of the circumstances is necessary to resolve this termination-of-parental-rights appeal. B.A.F. is the mother of three children involved in the case: ten-year-old Big Brother, five-year-old Little Brother, and four-year-old Sister. The district court had previously involuntarily terminated Mother's parental rights to her oldest child, not at issue here, in 2014, and Stearns County received a report in 2020 that Mother was using methamphetamine.

A child-protection caseworker tried to meet with Mother and instead found Little Brother and Sister, without Mother, in a house known to authorities as a drug house. Mother and Little Brother tested positive for methamphetamine. The county removed all three children from Mother's care and, after months of Mother's alleged failure to progress on her case plan, moved to terminate Mother's parental rights to the three children.

The district court recognized that Mother was statutorily presumed unfit to parent because of her previous involuntary termination. It then terminated her parental rights, and this appeal follows.

DECISION

Mother contends that the district court improperly terminated her parental rights to the three children. A district court may terminate a parent's rights if it determines that she is "palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4) (2020). The district court presumes that a mother is palpably unfit to parent

if her rights to parent a different child were previously involuntarily terminated. *Id.* A parent rebuts this presumption if she introduces evidence that supports a finding that she may "be entrusted with the care of the children." *In re Welfare of J.A.K.*, 907 N.W.2d 241, 246 (Minn. App. 2018) (quotation omitted). The burden of rebutting the unfitness presumption is not high. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). In fact, it "is easily rebuttable." *Id.* If the parent makes a showing sufficient to rebut the presumption, the county bears the burden to prove by clear and convincing evidence that she is palpably unfit to parent. *J.A.K.*, 907 N.W.2d at 246. The county can carry that burden only with evidence demonstrating the parent's consistent pattern of specific conduct or specific conditions that directly relate to the parent-child relationship and that are of a duration or nature rendering her unable to care appropriately for the children's needs for the reasonably foreseeable future. Minn. Stat. § 260C.301, subd. 1(b)(4).

Mother contends specifically that the district court erroneously failed to find that she rebutted the presumption of palpable unfitness, and she points to various evidence that she offered at trial. The district court did not discuss the evidence that Mother submitted regarding her progress on her case plan, and it concluded that she failed to rebut the presumption of unfitness by applying a standard of proof expressly rejected by the supreme court. Although the supreme court has clarified that the "standard . . . is a much lower bar than the 'clear and convincing' standard" that the county must meet to justify termination, *R.D.L.*, 853 N.W.2d at 137, during trial the district court here announced that "the burden has shift[ed] to [Mother] to prove by clear and convincing evidence that she has rebutted the presumption." We must infer that the district court applied this mistaken standard when

it later concluded that "[Mother] has failed to rebut the presumption that she is palpably unfit to be a party to the parent and child relationship."

The county urges us to affirm despite this erroneous presumption-rebutting standard, reasoning that the district court nevertheless also found that the county proved by clear and convincing evidence that Mother remains palpably unfit to parent. But the district court never made the finding that Mother is palpably unfit to parent. The closest the district court came to the finding was its declaration that, "[d]espite [Mother's] past periods of sobriety since her prior involuntary termination, there is clear and convincing evidence that she is currently actively using methamphetamine." That Mother actively uses methamphetamine is certainly a factor to consider when analyzing whether she is palpably unfit to parent, but it is not itself a finding of palpable unfitness. We see nothing in the district court's reasoning, findings, or conclusions to justify affirming on the suggested alternative ground.

The combination of the district court's applying the wrong standard of proof and also failing to reach the ultimate issue of Mother's palpable unfitness requires us to reverse. In reversing and remanding for the district court to analyze the evidence under the proper standard, we offer no opinion about the quality of Mother's or the county's evidence. We leave to the district court's discretion whether to reopen the record to determine Mother's parental rights.

Reversed and remanded.