STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0364

In the Matter of the Welfare of the Children of:
M. R. K., J. J. A., and Any Unknown Alleged Father, Parents.

Filed August 23, 2021
Affirmed
Hooten, Judge

Stearns County District Court
File No. 73-JV-20-7359

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Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

HOOTEN, Judge

On appeal from the district court's termination of her parental rights, appellant-mother argues that the district court should have ruled that (a) she overcame the presumption that she is a palpably unfit parent; and (b) it was not in the child's best interests to terminate mother's parental rights. We affirm.

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

FACTS

In November 2019, the parental rights of appellant mother, M.R.K., were involuntarily terminated with respect to her two oldest children, subject to parenting time agreed to by M.R.K. and the children's custodian. The county concluded that reasonable efforts to reunify M.R.K. with her two oldest children had failed and that it was in the best interests of the children to terminate her parental rights. These involuntary terminations occurred after Stearns County Human Services (the county) offered services to M.R.K. through a case plan focused on M.R.K.'s chemical dependency involving the use of methamphetamine. According to the district court, M.R.K. agreed to transfer custody of her two oldest children to the custodian "so that she could get her substance abuse under control," and nothing in the record shows that M.R.K. ever appealed the termination of her parental rights with respect to her two oldest children.

In October 2020, M.R.K. gave birth to a third child (the child), who is the subject of this proceeding. At birth, the child tested positive for methamphetamine. Because M.R.K.'s parental rights to her other children were previously involuntarily terminated, the county was required to immediately file a petition to terminate her parental rights to the child. *See* Minn. Stat. § 260C.503, subd. 2(a)(4) (2020). The county petitioned the district court to terminate M.R.K.'s parental rights to the child, alleging that M.R.K. was presumed palpably unfit to be the child's parent under Minn. Stat. § 260C.301, subd. 1(b)(4) (2020). Also, because of the previous termination of M.R.K.'s parental rights, the district court relieved the county of its duty to make reasonable efforts to prevent the removal of the child under Minn. Stat. § 260.012(a)(2) (2020).

In January 2021, M.R.K. was arrested in Wright County and charged with driving while intoxicated (DWI) with three children in the car. As a result, Wright County placed M.R.K on pretrial release under the condition that she undergo alcohol monitoring three times a day, in addition to ongoing sweat patch testing required as part of her probation for a prior fifth-degree drug possession charge. On the morning of February 3, 2021, M.R.K. tested positive for alcohol. Later that same day, she again tested positive for alcohol before her scheduled parenting time with the child. One day later, one of M.R.K.'s sweat patches tested positive for methamphetamine.

On February 5, 2021, appellant entered a 90-day residential treatment program where she was residing when this case went to trial on February 19, 2021. After trial, the district court terminated M.R.K.'s parental rights to the child, finding that she had "not rebutted the statutory presumption that she [was] palpably unfit to parent" the child. The district court determined that there was "no evidence supporting a conclusion that [M.R.K.'s] drug addiction will not continue for a prolonged, indefinite period so as to be permanently detrimental to the welfare of the child." (quotation omitted). Additionally, the district court found "that clear and convincing evidence exists that it is in the best interests of the child to involuntarily terminate the parental rights of [M.R.K.]." M.R.K. appeals.

DECISION

"We affirm the district court's termination of parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, provided that the county has made

reasonable efforts to reunite the family." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted). We give "[c]onsiderable deference" to the district court's decision to terminate parental rights "because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). However, we must still "closely inquire into the sufficiency of the evidence to determine whether the evidence was clear and convincing." *In re Welfare of K.L.W.*, 924 N.W.2d 649, 653 (Minn. App. 2019), *review denied* (Minn. Mar. 8, 2019) (quotation omitted). When reviewing a district court's decision to terminate parental rights, we review the district court's factual findings for clear error but "review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "A finding is clearly erroneous if it is either manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660–61 (Minn. 2008) (quotation omitted).

1. Palpable unfitness

M.R.K. contends that she successfully rebutted the presumption of palpable unfitness to parent because "the steps she has taken are sufficient to overcome the presumption created by the prior involuntary transfers of custody" and that "[i]t is reasonable to expect that with success in [the residential treatment] program, [she] would be able to be in a position to successfully parent [the] child within a few months."

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). However, "upon a showing that the parent's parental rights to one or more other children were involuntarily terminated," we presume that a parent is palpably unfit to parent. Minn. Stat. § 260C.301, subd. 1(b)(4). In cases involving prior involuntary terminations of parental rights, the parent has the burden of rebutting the presumption of palpable unfitness. *See In re Welfare of J.A.K.*, 907 N.W.2d 241, 245–46 (Minn. App. 2018). This burden is not high; in fact, it "is easily rebuttable." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014).

"[W]hether the evidence satisfies the burden of production is determined on a case-by-case basis." *Id.* at 137. When reviewing the parent's evidence, a district court must determine whether the evidence is sufficient to "justify a finding of fact that [the parent] is not palpably unfit." *Id*. (alteration in original) (quotation omitted). If the presumption is not rebutted, the statutory ground of palpable unfitness is established. *See In re Welfare of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). However, if a parent introduces such evidence, the statutory "presumption is rebutted and has no further function at the trial." *Id.* The county then bears the burden to prove by clear and convincing evidence that the parent is palpably unfit to be a parent. *J.A.K.*, 907 N.W.2d at 247–48. We apply a de novo standard of review to a district court's determination as to whether a parent has rebutted the statutory presumption. *J.W.*, 807 N.W.2d at 446.

Because M.R.K.'s parental rights to her two oldest children were previously involuntarily terminated, due to her chemical dependency involving the use of methamphetamine, she is presumed to be palpably unfit to parent, Minn. Stat. § 260C.301,

subd. 1(b)(4), and she had the burden of rebutting that presumption. *J.A.K.*, 907 N.W.2d at 245–46. M.R.K. argues that she rebutted the statutory presumption of unfitness because, "[t]hrough the programming that she is attending, [she] has demonstrated that she can be in a position to have the child placed back with her in the near future." Specifically, appellant contends that she would "be in a position to successfully parent [the] child within a few months." In her attempt to rebut the statutory presumption of unfitness at trial, M.R.K. testified that: (1) she did not miss any supervised parenting time throughout the course of this proceeding; (2) she entered a 90-day inpatient residential treatment program on February 5, 2021; (3) she was taking classes through Love and Logic to improve her parenting skills; (4) there was a parenting component once a week as part of her residential treatment; (5) her current residential treatment program was more thorough than other programs she had been involved with; and (6) she would "be doing outpatient aftercare" following her current inpatient treatment program. M.R.K. also testified that she had received treatment several times before attending her current residential treatment program, that she had used methamphetamines during her pregnancy with the child, and that she had relapsed several times after the child's birth before entering treatment. M.R.K. stated that she had completed a drug and alcohol test when she was admitted to her current residential treatment program and tested positive for both methamphetamine and alcohol. M.R.K. admitted that the past month or two had not been great for her, but stated that she hoped that the district court "would take into consideration all that [she was] trying to do." M.R.K. testified

> I love my children very much and I know I've made a lot of bad choices but I am trying to get my life back on track and I hope that [the district court] can see that . . . I know that, the things that I've done [are] wrong, but when it comes down to taking care of my children, I love them and I would do anything for them. Even though I've made the mistakes and the bad choices that I've made over the past couple months.

M.R.K.'s sister and mother also testified as M.R.K.'s witnesses at trial. M.R.K.'s sister testified that M.R.K. "was a very good mother," and that she seemed "very attentive to [M.R.K.'s oldest child's] needs" and "very willing and wanting to do fun activities and take [the oldest child] places and teach [the oldest child] new things." However, M.R.K.'s sister also testified that she had concerns about M.R.K.'s ability to take care of children "in the last month or so," specifically M.R.K.'s "addictions seeming more on the forefront" and her "[DWI] and drinking coming up." M.R.K.'s sister further testified, that "[M.R.K.] was an excellent mother. Obviously hasn't been topnotch lately, but I know that if she wasn't under the influence of anything she is a very good mother."

M.R.K.'s mother described the relationship between M.R.K. and her children as "very good," but also testified that she has seen M.R.K.'s drug and alcohol use "progressively increasing" over the years. M.R.K.'s mother further testified that M.R.K. is "very orientated to get better" and to be "drug free" through her current residential treatment, which M.R.K.'s mother described as a "big change" from M.R.K.'s prior attempts at treatment. M.R.K.'s mother stated that she had no concerns about M.R.K.'s ability to parent, assuming that she was sober.

Despite the evidence that M.R.K. presented, the district court determined that M.R.K. failed to meet her burden of presenting sufficient evidence to rebut the statutory

presumption of unfitness. The district court concluded that, although M.R.K. presented evidence showing her "short-term success by entering treatment," the evidence she presented could not affirmatively support a finding "that her parenting abilities have improved and that she has the ability to successfully parent a child."

We agree. M.R.K.'s assertions that her parenting abilities are likely to improve in the reasonably foreseeable future are merely speculative. Although M.R.K.'s decision to enter residential treatment is commendable, two weeks in residential treatment is not a significant enough period of sobriety to demonstrate that her parenting abilities have improved to the point where she is suitable to be entrusted with the care of the child or that she is likely to become sober in the reasonably foreseeable future. *See In re Welfare of J.D.L.*, 522 N.W.2d 364, 369 (Minn. App. 1994) (affirming termination of a father's parental rights where father's contention that he "might develop appropriate parenting skills within a few years" was "speculative at best").

M.R.K. did not produce enough evidence to support a finding that "her parenting abilities have improved" to the point where she is suitable to be entrusted with the care of the child, *J.W.*, 807 N.W.2d at 446 (quotation omitted), and her assertions that her parenting abilities are likely to improve in the reasonably foreseeable future are merely speculative. *See J.D.L.*, 522 N.W.2d at 369. She, therefore, failed to rebut the statutory presumption of palpable unfitness to parent, *see J.W.*, 807 N.W.2d at 445–46, and the district court did not err in determining that the statutory ground of M.R.K.'s palpable unfitness to parent was established.

2. Best interests of the child

M.R.K. also argues that termination of her parental rights is not in the best interests of the child because the "decision to terminate the parental rights of [the] child will potentially have long term impacts on [the] child's relationship with [the child's] older siblings." To determine the best interests of a child in a termination of parental rights case, the court must consider: "(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," such as a stable environment, and health concerns. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992); *see* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). When, as here, a statutory basis to terminate parental rights under Minn. Stat. § 260C.301, subd. 1 (2020), exists, and "the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2020). We review the district court's finding that termination of parental rights is in the best interests of the child under an abuse of discretion standard. *J.R.B.*, 805 N.W.2d at 905.

At trial, M.R.K.'s Wright County probation agent, Stearns County probation agent, chemical dependency counselor, Stearns County social worker, and parenting time supervisor testified on behalf of the county. The county also called M.R.K. and the child's guardian ad litem to testify. M.R.K.'s sister, mother, and friend testified on behalf of M.R.K., and M.R.K. also testified in her own defense.

The social worker testified that she was the current case manager assigned to the child. The social worker acknowledged that M.R.K. has remained in contact with her "more than just one time a month." She testified that M.R.K. had "talked several times

about getting into treatment" since October 2020, but M.R.K. had not followed through "until recently." The social worker also testified that although M.R.K. had told her "on a couple occasions that she'[d] done online parenting classes and that she [had] sent [the social worker] the certificates," the social worker had "never received certificates of completion of any parenting classes." The social worker opined that termination of M.R.K.'s parental rights to the child would be in the child's best interests because the social worker had not received verification as to whether or not M.R.K. was completing drug or alcohol testing or whether or not any tests she had taken were clean. The social worker stated that termination would be in the child's best interest "just due to the fact that the conditions [hadn't] changed."

M.R.K.'s Stearns County probation agent testified that M.R.K. had been on supervised probation with him since "October or November of 2019." The probation agent testified that M.R.K. was required to "abstain from mood-altering chemicals and submit to random testing" as conditions of her probation, in addition to undergoing "chemical dependency evaluation." He testified that although M.R.K.'s required urinalysis testing had been suspended in March 2020, due to the COVID-19 pandemic, M.R.K. was once again required to complete required urinalysis testing in August 2020. The probation agent testified that M.R.K. was unable to take a test on August 11, 2020, because she "did not have payment," she "did not show up" for scheduled tests on September 24, 2020 and September 29, 2020, and she "was unable to provide a sample" for a test scheduled for November 18, 2020. The probation agent testified that he switched M.R.K. to sweat patch testing in December 2020, her first sweat patch tested positive for methamphetamine, the

second sweat patch was unable to be tested because she failed to attend the appointment to remove the patch, and the third patch also tested positive for methamphetamine.

The probation agent stated that he had filed a probation violation against M.R.K. during the week of trial for her "failure to remain law abiding related to [her] new DWI arrest, failure to abstain from mood-altering chemicals due to [her] positive alcohol reading [on February 3, 2021], [her] presumed alcohol use during [her] DWI arrest, . . . [her] positive sweat patch tests," and her failure to complete her required urinalysis tests earlier in 2020. Although the probation agent stated that M.R.K. "had cooperated in certain aspects, like communicating with [him] and staying in contact with [him]," he also testified that M.R.K.'s drug testing had been a "constant issue."

The child's guardian ad litem testified that she had been assigned to the child in October 2020 and that M.R.K. had been available to working with her "[u]p until the time she went into treatment." She testified that she was not aware of any period of sobriety M.R.K. had since the child's birth except for her two weeks in residential treatment immediately prior to trial. The guardian ad litem opined that M.R.K. was palpably unfit to be a parent to the child. She also stated that she supported the termination of M.R.K.'s parental rights to the child and that the termination was in the child's best interests because M.R.K. "still ha[d] not corrected her circumstances." Specifically, the guardian ad litem noted M.R.K.'s "very, very recent [substance] use," her DWI arrest, and her attempt to attend parenting time while intoxicated.

Based on the evidence and testimony presented at trial, the district court concluded that involuntary termination of M.R.K.'s parental rights was in the child's best interests.

In making this determination, the district court noted that M.R.K. has had "frequent contact and assistance" from Stearns County in the past to "assist her in overcoming her chemical addictions and maintaining her relationship with her children," but that those services "did not succeed in removing [M.R.K.] from her chemical dependency." The district court also explained that while M.R.K. had "received treatment several times" before beginning her current residential treatment, "she continued to have chemical dependency issues and ha[d] relapsed several times in the previous year alone." Specifically, the district court noted that "[d]espite [M.R.K.'s] limited contact with the child," she "still let her chemical dependency concerns impact her time with the child" when she showed up intoxicated to her parenting time with the child. Although the district court acknowledged that M.R.K.'s "current treatment facility may have a stronger focus on mental health than previous programs she attended" and that she "has shown progress by entering [her current] treatment," the district court nonetheless found that M.R.K. had "not shown evidence of a sustained change in chemical dependency." Without evidence of such a change, the district court concluded that it was "unable to . . . risk [the child's] continued presence or return to such an environment" because "[t]he child needs a drug free home and a drug free mother."

The district court's findings are supported by extensive evidence in the record. Between December 2020 and the trial on February 19, 2021, M.R.K. had two sweat patches test positive for methamphetamine, and she tested positive for alcohol on February 3, 2021, before and at her scheduled parenting time with the child. In January 2021, less than two months before trial, M.R.K. was arrested in Wright County and charged with driving while intoxicated with three children in the car.

M.R.K.'s social worker opined that termination of M.R.K.'s parental rights to the child would be in the child's best interests "just due to the fact that the conditions ha[d]n't changed" and because the social worker had not received verification as to whether or not M.R.K. was completing drug or alcohol testing during her inpatient treatment program or whether any tests she had taken were clean. The child's guardian ad litem also testified that she supported the termination of M.R.K.'s parental rights to the child and that the termination was in the child's best interests because M.R.K. "still ha[d] not corrected her circumstances," noting M.R.K.'s "very, very recent use," her DWI arrest, and her attempt to attend parenting time while intoxicated. Additionally, M.R.K.'s probation agent testified that M.R.K.'s drug testing had been a "constant issue."

These facts in the record are sufficient to support the district court's determination that termination of M.R.K.'s parental rights was in the child's best interests due to M.R.K.'s ongoing chemical dependency, and therefore, the district court did not abuse its discretion on this issue or in terminating her parental rights to the child.

Affirmed.