STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0416

In the Matter of the Welfare of the Child of: M. H., Custodial Parent,
K. H., Stepparent,
and J. B., Mother.

Filed October 18, 2021
Affirmed
Florey, Judge

Olmsted County District Court
File No. 55-JV-19-6681

Danielle L. Difiore, Anderson Law Firm, Rochester, Minnesota (for appellants)

Michael D. Schatz, Schatz Law Firm, Rochester, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

On appeal from the district court's denial of appellants' private petition to terminate respondent's parental rights, appellants argue that (1) the record does not support the district court's determinations that respondent rebutted the presumption that she was a palpably unfit parent and (2) the district court failed to make adequate findings that denying appellants' petition was in the best interests of the child. Because respondent introduced evidence sufficient to create a genuine issue of fact as to whether she is palpably unfit and

because the district court is not required to make best-interests findings absent the existence of a statutory basis for termination, we affirm.

FACTS

Appellants M.H. and K.H., who are the biological father and stepmother of J.H.H., contest the district court's denial of their private petition to terminate respondent-mother's parental rights to J.H.H. Appellants argue that respondent failed to overcome the statutory presumption of palpable unfitness triggered by the involuntary termination of her parental rights to her other child and that the district court failed to make findings that denying their petition was in the child's best interests.

In July 2019, prior to the commencement of this case, respondent's parental rights were involuntarily terminated with respect to her other child because of her mental-health and chemical-dependency issues. At that time, respondent had the following services in place: chemical-dependency treatment, Adult Rehabilitative Mental Health Services (ARMHS) worker, psychiatric treatment and medication management, supervised parenting time through the Family and Children's Center, Community of Recovering Aiding Families in Transition (CRAFT) Program, county-support social worker, probation officer, mental-health therapist, and alcohol monitoring. Despite participation in these services, respondent failed to maintain sobriety. Her parental rights were terminated on the bases that reasonable efforts failed to correct the conditions leading to out of home placement and that her other child who was the subject of that petition experienced egregious harm in respondent's care.

In September 2019, appellants petitioned to terminate respondent's parental rights to J.H.H. on two statutory grounds: (1) that respondent has "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship" and (2) that respondent is "palpably unfit to be a party to the parent and child relationship." Because respondent's parental rights to the other child had been terminated, respondent was presumed to be a palpably unfit parent to J.H.H. Minn. Stat. § 260C.301, subd. 1(b)(4) (2020).

The district court held a two-day trial in February 2021. To rebut the presumption of palpable unfitness, respondent testified and offered the testimony of her clinical counselor, ARMHS worker, probation officer, friend and co-sponsor, and her prescribing nurse practitioner. Collectively, the testimony showed that respondent has made tangible changes in her life and is in a much better place now than she was at the time of her previous TPR in 2019.

On March 18, 2021, the district court issued an order denying appellants' petition to terminate respondent-mother's parental rights to J.H.H. The district court found that respondent's credible and considerable evidence rebutted the presumption of palpable unfitness and that appellants failed to prove by clear-and-convincing evidence the existence of a statutory ground for termination. This appeal follows.

DECISION

I. Respondent overcame the presumption of palpable unfitness.

Appellants argue that respondent failed to overcome the presumption of unfitness because: (1) she is participating in the same services she participated in during the previous

TPR; (2) she failed to present objective and verifiable evidence of her sobriety; and (3) respondent's alleged sobriety does not demonstrate that she is capable to be entrusted with the care of J.H.H. We disagree.

A district court may terminate parental rights if it finds that a parent is "palpably unfit to be a party to the parent and child relationship." Minn. Stat. §260C.301, subd. 1(b)(4) (2020). A parent is presumed to be palpably unfit if their parental rights to a different child had previously been involuntarily terminated. *Id.* If the presumption applies, the presumptively unfit parent has the burden to produce evidence sufficient "to support a finding that the parent is suitable to be entrusted with the care of the child[]." *In re Welfare of Child of J.A.K.*, 907 N.W.2d 241, 246 (Minn. App. 2018), *rev. denied* (Minn. Feb. 26, 2018) (citation omitted). The presumption is "easily rebuttable." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). The presumptively unfit parent need only introduce evidence that creates a genuine issue of fact on the issue of palpable unfitness. *Id.* If a parent introduces such evidence, the statutory "presumption is rebutted and has no further function at the trial." *In re Welfare of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

The petitioning party then bears the burden to prove by clear and convincing evidence that the parent is, in fact, palpably unfit to parent the child in question. *J.A.K.*, 907 N.W.2d at 247-48. The district court "shall find the existence or nonexistence of the alleged palpable unfitness upon all the evidence exactly as if there never had been a presumption at all." *Id.* at 246 (quotation and citation omitted). If the district court finds the parent to be palpably unfit, it may terminate parental rights only after finding the

termination to be in the child's best interests. *In re Welfare of Children of R.W.*, 678 N.W.2d 49, 54-55 (Minn. 2004).

This court reviews a district court's determination as to whether a parent has rebutted the statutory presumption of palpable unfitness de novo. *J.A.K.*, 907 N.W.2d at 246 (citation omitted). Nevertheless, the district court's credibility determinations are due "considerable deference" as it is in the superior position to evaluate the credibility of witnesses. *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009).

Appellants argue that respondent's participation in services is insufficient to overcome the presumption because the only services she is currently participating in are those she participated in when her parental rights to her other child were involuntarily terminated. Appellants rely on *In re Welfare of D.L.D.* in support of this argument, where this court stated, "to rebut a presumption of palpable unfitness, a parent must do more than engage in services; a parent must demonstrate that his or her parenting abilities have improved." 771 N.W.2d 538, 545 (Minn. App. 2009). Appellants claim that respondent's failure to participate in services or activities aimed at improving her parenting skills distinguishes this case from those cited in the district court's order, where the parent at issue engaged in supervised parenting time or participated in parenting-skills-focused programs.

We initially note that *D.L.D.*'s discussion of the threshold for rebutting the presumption of palpable unfitness is stale. Specifically, *D.L.D.*, predates the Minnesota Supreme Court's statement in *R.D.L.* that the presumption of palpable unfitness is "easily rebuttable." 853 N.W.2d at 134. Since *R.D.L.*, this court has recognized that *D.L.D.*'s

discussion of the threshold for rebutting the presumption of palpable unfitness identifies an artificially high threshold for doing so. *J.A.K.*, 907 N.W.2d at 245 n.1. Additionally, in *D.L.D.*, the presumptively unfit parents failed to overcome the presumption after they introduced evidence of their participation in the same services they were engaged in during their previous TPR. *Id.* at 544. However, in that case, the parents' failure to rebut the presumption was not based solely on the similarity of the services they were engaged in. *Id*. Rather, the district court found the parents uncooperative because, at the time of the trial, neither parent had started chemical-dependency treatment, the father had not completed his court-ordered domestic-abuse counseling, and the parents had not engaged in couples counseling. *Id.* at 544-45. Further, the presumptively unfit mother changed therapists to present herself in a better light, and the father continued to engage in criminal behavior. *Id.* at 543.

The present matter is easily distinguishable from *D.L.D.* Here, respondent completed all recommended chemical-dependency treatment, complied with the conditions of her probation, and is engaged in individual therapy. Significantly, respondent has continued to work with the same providers. Her clinical counselor and ARMHS practitioner testified at both the 2019 TPR and the trial for the current matter. Respondent's clinical counselor testified as to the significant improvements respondent has made relative to her mental-health therapy since the beginning of 2019. Her ARMHS practitioner testified to noticing a "real shift" in respondent over the past year, noting that respondent takes the necessary steps for her mental health, is more engaged with her services, and has developed a healthy support system that she was previously lacking. Respondent

acknowledged her previous lack of engagement with the services and stated she did not fully internalize the concepts. Now, respondent testified that she implements the steps of her 12-step program into her daily life, sponsors three other women, and holds AA/NA meetings at a local church.

Appellants point to the fact that respondent does not participate in any services aimed at improving her parenting skills and argue that sobriety alone does not demonstrate she is suitable of being entrusted with the care of J.H.H. However, the services respondent participates in are directly related to the conditions that made her unfit in the first place—her chemical-dependency and mental-health issues. Further, the record shows that respondent was participating in supervised parenting time until appellants discontinued the visits after the results of the 2019 TPR.

Appellants next challenge respondent's evidence of sobriety, arguing that respondent failed to provide any objective and verifiable evidence of sobriety by not introducing the testimony of her most recent treatment provider. This court defers to the district court's determinations of witness credibility and the weight given to the evidence. *S.S.W.*, 767 N.W.2d at 733. The district court's thoughtful order emphasized that much of respondent's evidence came from individual providers, professionals, and support persons in the community. It stated that these witnesses

> confirm[ed] [r]espondent's testimony that she has undergone significant positive change since the time of the TPR. Each of them testified in substantially similar terms as to their independent observations of the manner in which [r]espondent's direction in life has altered for the better.

The district court gave greater weight to these testimonies because the witnesses are professionals trained to recognize dishonesty and deception and have no reason to lie for respondent. It further found it unlikely that respondent "managed to mislead so many objective professionals as to her trajectory in life" and more likely that "the changes they see in [r]espondent are, and have been, real." Additionally, the record shows that respondent completed all recommended chemical-dependency treatment, is engaged in aftercare, is dedicated to her recovery and sobriety, and is active in the recovery community. Further, respondent complied with her probationary conditions, passed all eight of her UAs, and has abstained from all substances since June 2020 and from illegal drugs since November 2019.

Based on our de novo review, the evidence presented was sufficient to raise a genuine issue of fact as to whether respondent is palpably unfit. Because we agree with the district court's conclusion that respondent overcame the presumption of palpable unfitness, the presumption had "no further function at the trial." *J.W.*, 807 N.W2d at 445. It then became appellants' burden to prove by clear-and-convincing evidence that respondent either "substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed" by the parent and child relationship or that respondent is "palpably unfit to be a parent." Minn. Stat. §260C.301; *see J.A.K.*, 907 N.W.2d at 247-48. However, the district court found that appellants failed to meet their burden, and appellants do not challenge the district court's conclusion on appeal.

II. The district court was not required to find that denying appellant's petition to terminate respondent's parental rights was in the best interests of the child.

Appellants argue that the district court erred by failing to make specific findings that denying their petition is in the child's best interests.

The "involuntary termination of parental rights is proper only when at least one statutory ground for termination is supported by clear and convincing evidence *and* the termination is in the child's best interests." *R.D.L.*, 853 N.W.2d at 137 (citing *R.W.*, 678 N.W.2d at 54-55). While the child's best interests is a significant factor for consideration, "it cannot be the sole justification for the termination of parental rights." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 10 (Minn. App. 1992).

Because the district court found that appellants failed to present clear and convincing evidence of the existence of at least one statutory ground for termination, and because the termination of parental rights cannot be based solely on the best interests of the child, the district court did not need to find that denying appellants' petition was in the best interest of the child. Therefore, the district court did not err by failing to make these findings.

Affirmed.