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Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1617
A21-1683

In the Matter of the Welfare of the Child of: D. M. P. and J. T. P., Parents.

Filed May 31, 2022
Reversed and remanded
Bryan, Judge

Becker County District Court
File No. 03-JV-21-1082

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Considered and decided by Cochran, Presiding Judge; Bryan, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In these consolidated appeals, appellants mother and father challenge the decision of the district court to terminate their parental rights. Both appellants argue that the district court erred in ruling that they failed to rebut the presumption that they are palpably unfit parents. Because the district court's analysis regarding the rebuttable presumption

misapplies applicable law, we reverse the district court's order and remand the matter for further proceedings.

FACTS

Appellants D.M.P. and J.T.P. are the parents of S.M.L.P. (the child). In June 2021, respondent Becker County Human Services (the county) filed a petition for an involuntarily termination of parental rights (TPR) of D.M.P. and J.T.P. Pursuant to Minnesota Statutes section 260C.301, subdivision 1(b)(4) (2020), the termination petition alleged that the parents were palpably unfit to be parties to the parent-child relationship because their parental rights had previously been terminated involuntarily. The case proceeded to trial.

At trial, the district court admitted several exhibits and heard testimony from various witnesses, including father, mother, the child's paternal grandmother, a guardian ad litem (GAL), and a county social worker (social worker), among others. Much of this evidence concerned the parents' previous terminations and experience with domestic violence, including the circumstances of father's conviction for domestic violence in 2019. The district court also received evidence relating to the best interests factors.

Mother and father both testified that they have made changes in their lives since their previous terminations and asserted that their parenting abilities had improved such that they were suitable to be entrusted with the care of a child. Both parents have stable housing and are employed full-time. Father testified that he completed inpatient drug and alcohol dependency programming as well as completed anger management programming. Father further explained that he had participated in domestic violence programming as part of his previous convictions. Mother testified that she took domestic violence information

classes from 2018 to 2020, is no longer with the boyfriend she was with during the previous termination proceedings, and her current relationship with father has been healthy and positive. Mother also testified that she learned from her past relationship and should her relationship with father become unhealthy or unsafe, she would leave. In addition, mother stated that she previously attended counseling and would be willing to resume therapy. The child's paternal grandmother testified that in her opinion, the parents are fit and able to care for the child. She also testified that she has seen growth in father's communication and parenting skills over the years.

The GAL testified regarding the parents' abilities and recommended that the parents' parental rights be terminated because of the history of domestic violence in the parents' respective backgrounds. The GAL acknowledged that there was no evidence of domestic abuse between the parents and attested to the parents' current parenting skills. For instance, the GAL explained her observations that the parents suitably cared for the child during visits: "I have no doubt [mother] loves her child and I have no doubt [father] loves his child. During visitation you could see wonderful interaction. They're engaging with the baby. They're, you know, meeting his needs, making sure he's fed, and making sure he's diapered." The GAL also testified that the parents identified a broken car seat while the child was not in their care, which was fixed.

On direct examination and again on cross-examination, the social worker stated that she did not have any current chemical dependency concerns for either parent. She also agreed that chemical dependency was not the primary concern and that there was no domestic violence involved in the relationship between mother and father. Further, the

social worker acknowledged that the parents had appropriate housing, were both employed, and have "lots of great parenting skills." She stated that she had no concerns about their ability to provide the day-to-day care for the child and would describe them as nurturing parents. More specifically, the social worker explained that the parents provide a diaper bag with all the essentials that a baby would need, engage with the child often, ask developmentally appropriate questions of the child, comfort the child when needed, and are able to demonstrate safe parenting. Nevertheless, the social worker concluded that in her opinion, termination would be in the child's best interests.

The district court issued an order terminating the parents' parental rights. The district court first determined that the parents did not rebut the presumption of palpable unfitness and, therefore, the county did not bear the burden of proof on its TPR petition. The district court granted the TPR petition on this basis alone, concluding that the parents did not establish their fitness to be a parent. Mother and father filed separate appeals, and this court consolidated them.

DECISION

Mother and father argue that they presented sufficient evidence to rebut the presumption of palpable unfitness and that the district court applied an incorrect burden of proof. We believe that the district court did not properly analyze whether the parents satisfied the burden of production that shifts the burden of proof to the county.

"Parental rights are terminated only for grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). A district court may terminate parental rights when at least one statutory ground for termination is supported by clear and

convincing evidence and the court determines that termination is in the children's best interests. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). Generally, the petitioner must establish by clear and convincing evidence that a statutory ground exists for terminating parental rights. *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996). However, when a person's parental rights to a child have previously been terminated involuntarily, courts must apply a presumption of palpable unfitness, and unless the parent rebuts this presumption, the county does not bear the ultimate burden to prove the elements of a termination petition. Minn. Stat. § 260C.301, subd. 1(b)(4) (stating that a parent is presumed to be palpably unfit "upon a showing that the parent's parental rights to one or more other children were involuntarily terminated").

The presumption imposed by the statute is "easily rebuttable" if the parent introduces evidence that could support a finding that the parent is able to care for the child:

> The statutory presumption also is consistent with a parent's constitutional rights because it is narrowly tailored to serve the compelling government interest. The statutory presumption is narrowly tailored in part because it is easily rebuttable. The statutory presumption imposes only a burden of production, which means that a parent may rebut the statutory presumption merely by introducing evidence that would justify a finding of fact that [the parent] is not palpably unfit. In other words, a parent seeking to rebut the statutory presumption needs to produce only enough evidence 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, 245-46 (Minn. App. 2018) (quoting *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 135-38 (Minn. 2014) and *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445-47 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012)) (quotation marks and other citation omitted). In determining whether a parent's

evidence rebuts the presumption that the parent is palpably unfit, a court should credit and consider the evidence without weighing it against any contrary evidence. *See J.W.*, 807 N.W.2d at 445-47 (concluding that the parent's evidence, "if believed," would support a finding that the parent was not palpably unfit, and that the evidence was therefore sufficient to rebut the statutory presumption).

Mother and father attempted to rebut the presumption of palpable unfitness through presentation of the following evidence. They both testified that they have made changes in their lives since their previous terminations and that they have stable housing and full-time employment. Father testified that he completed treatment and programming, and mother explained that she has also undergone counseling and completed domestic violence information classes. The testimony from the child's paternal grandmother, as well as testimony provided during cross examination of the county's witnesses, relates to whether the parents can be entrusted with the care of the child. For instance, the child's paternal grandmother testified that the parents are fit and able to care for the child. In addition, both the GAL and the social worker acknowledged that there was no evidence of domestic abuse between the parties, and both gave a list of concrete examples of the parents' current parenting skills. The social worker stated that the parents have "lots of great parenting skills" and that she had no issues with their ability to provide the necessary day-to-day care for the child. If believed, this evidence may be sufficient to rebut the statutory presumption.

In making the determination that the parents failed to rebut their burden, the district court did not accurately articulate the statutory presumption. While the district court noted that the presumption could be rebutted when a parent affirmatively and actively

demonstrates the parent's ability to successfully care for a child, the district court did not discuss the "easily rebuttable" nature of the statutory presumption. Moreover, the district court did not accept the evidence presented by the parents as true and instead weighed the parents' evidence against evidence to the contrary. We conclude that this analysis misapplies the holdings of *R.D.L.*, *J.A.K.* and *J.W.* We reverse the district court's order and remand the matter to the district court to determine whether the parents have rebutted the statutory presumption under the correct standard and to apply the resulting burdens of proof regarding the statutory bases for termination. The district court retains the discretion to decide whether to reopen the record after remand.

Reversed and remanded.