STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0949

In the Matter of the Welfare of the Children of:
T. J. C. B. and B. R. S., Parents.

Filed December 12, 2022
Affirmed
Johnson, Judge

Koochiching County District Court
File No. 36-JV-22-153

Kimberly A. Wimmer, Wimmer Law Office, P.L.L.C., Littlefork, Minnesota (for appellant-mother T.J.C.B.)

Jeffrey Naglosky, Koochiching County Attorney, Molly J. French, Assistant County Attorney, International Falls, Minnesota (for respondent Koochiching County Public Health and Human Services)

Brittany Stolt, Squaw Lake, Minnesota (guardian *ad litem*)

Considered and decided by Johnson, Presiding Judge; Connolly, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The district court terminated T.J.C.B.'s parental rights to two children on the ground that she is palpably unfit to be a party to a parent-child relationship. We conclude that the district court did not err by determining that T.J.C.B. is palpably unfit or by determining that the termination of her parental rights is in the children's best interests. Therefore, we affirm.

FACTS

T.J.C.B. gave birth to twin boys in early February 2022, six weeks before their due date. During T.J.C.B.'s pregnancy, a Koochiching County social worker received a report that T.J.C.B. was using controlled substances. When T.J.C.B. was admitted to the hospital to give birth, she told a doctor that she and the children "were probably going to be positive" for controlled substances. T.J.C.B. later testified that she made that statement "to ensure that the boys got the best possible care that they could get and to monitor for withdrawal." T.J.C.B. and both children tested positive for the presence of controlled substances after the children's births.

The next day, Koochiching County petitioned the district court for an order adjudicating the children as in need of protection or services (CHIPS). The district court promptly granted the county's request for emergency protective care, and the county placed the children in foster care.

T.J.C.B. was discharged from the hospital a few days after giving birth but stayed at the hospital in a boarder room to be with the children. The children were discharged from the hospital approximately two weeks after their births. Thereafter, T.J.C.B. exercised her right to hour-long supervised visits with the children, initially on a daily basis but later only three days per week.

At a hearing in mid-February 2022, T.J.C.B. denied the allegations in the county's CHIPS petition. The county noted that T.J.C.B.'s parental rights to a different child had been terminated by a Colorado court but requested an opportunity to work toward T.J.C.B.'s reunification with her newborn twins.

In early March 2022, T.J.C.B. provided a urine sample that tested positive for methamphetamine. The county immediately suspended T.J.C.B.'s supervised visits with the children. The county promptly informed the district court that it wished to withdraw its CHIPS petition and petition for the termination of T.J.C.B.'s parental rights. The county based its request on T.J.C.B.'s methamphetamine relapse, her refusal to follow the recommendation arising from a chemical-use assessment, and her mental-health condition. T.J.C.B. opposed the county's request to withdraw the CHIPS petition. The district court granted the county's request to withdraw the CHIPS petition on the primary ground that it had no authority to deny it before a CHIPS adjudication and the alternative ground that reasonable efforts toward reunification were not justified.

Four days later, the county petitioned to terminate T.J.C.B.'s parental rights to the children. The county alleged one statutory ground for termination: that T.J.C.B. is palpably unfit to be a party to a parent-child relationship and that she is presumed to be palpably unfit on the ground that her parental rights to another child had been involuntarily terminated by a Colorado court in 2019. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (2022).

The district court scheduled a trial for a date in late May 2022. On the scheduled date, T.J.C.B. provided a urine sample that tested positive for methamphetamine. The district court rescheduled the trial for a date in early June 2022. On the rescheduled date, T.J.C.B. was in custody on charges of motor-vehicle theft, gross misdemeanor assault of a peace officer, and threats of violence, but she was released for purposes of making a personal appearance at trial.

Because T.J.C.B. bore the burden of rebutting the statutory presumption of palpable unfitness, she presented her evidence first. She introduced two exhibits. One exhibit was a letter from T.J.C.B.'s parenting-class instructor, which described T.J.C.B. as willing to learn and excited to parent. The other exhibit was a compilation of notes concerning T.J.C.B.'s supervised visits with the children. T.J.C.B.'s first witness was a licensed social worker employed by the hospital where the children were born, who testified that T.J.C.B. took good care of the children while they were in the hospital. T.J.C.B. next called a registered nurse employed by the hospital, who testified that T.J.C.B. visited the nursery often, asked appropriate questions, cooperated with the nursing staff, and bonded with the children.

T.J.C.B. then testified on her own behalf. On direct examination, she testified that she took good care of and bonded with the children at the hospital and during supervised visits, and she expressed confidence in her ability to parent the children on her own. She testified that she maintained sobriety while caring for the children at the hospital, in accordance with the hospital boarder agreement. T.J.C.B. described her mental-health treatment and stated that she has seen a particular therapist "off and on for close to fifteen years" and was seeing the therapist weekly at the time of trial. T.J.C.B. acknowledged that she had struggled with, and continues to struggle with, chemical dependency. She testified that she left an inpatient treatment program after the county suspended her visits with the children but that she is willing to work on her chemical dependency in the future. T.J.C.B. also testified about her intention to work at a restaurant where she had worked in the past and her plan to rely on help from family and friends to find appropriate housing. At the

close of her direct examination, she testified that she loves the children "very much" and that she can care for them in the reasonably foreseeable future with "the right help and people."

On cross-examination, T.J.C.B. denied using controlled substances after leaving inpatient treatment, except for the occasion when she had a positive drug-test result on the originally scheduled trial date. She denied drinking alcohol until the county read her therapist's written statement that T.J.C.B. "had a shot and a beer at work on Friday." She disagreed with her therapist's written statement that she is not interested in mental-health treatment. She agreed that she had experienced mental-health symptoms while in jail but denied that she had threatened to kill herself. She admitted that she said she was going to kill another inmate whom she dislikes. She admitted that she does not know where she and the children would live if she were reunited with them.

For its first witness, the county called a social worker who interacted with T.J.C.B. She testified that she offered services to T.J.C.B. after receiving a report that she was pregnant and using controlled substances. The social worker testified that the initial telephone contact went poorly because T.J.C.B. yelled at her, refused services, and hung up. The social worker testified that T.J.C.B. later reported using methamphetamine and amphetamines "two Saturdays a month" during her pregnancy with the children and "a few days before" the children's births. In addition, the social worker testified that T.J.C.B. was not willing to go to inpatient treatment.

The county also called T.J.C.B.'s mother as a witness. She testified about T.J.C.B.'s long-term struggles with drug use and mental-health issues. She also testified that she had

sought and received a harassment restraining order against T.J.C.B., which was in effect at the time of trial. T.J.C.B.'s mother testified about incidents in which T.J.C.B. threatened to kill her, including the incident that led to T.J.C.B.'s arrest. T.J.C.B.'s mother testified that she believes that T.J.C.B. is not capable of caring for the children and that the children would not be safe with her.

In mid-June 2022, the district court filed an order in which it granted the county's petition and terminated T.J.C.B.'s parental rights to the two children. The district court determined that T.J.C.B. did not rebut the presumption that she is palpably unfit and also determined that the county had proved by clear and convincing evidence that T.J.C.B. is palpably unfit. The district court also found that it is in the best interests of the children to terminate T.J.C.B.'s parental rights. T.J.C.B. appeals.

DECISION

I. Palpable Unfitness

T.J.C.B. first argues that the district court erred by concluding that she is palpably unfit.

A district court may terminate parental rights to a child if it finds

> that a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4). 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" under Minnesota law or the law of another jurisdiction. *Id.* This presumption is easily rebutted and "imposes only a burden of production," which requires that the parent introduce evidence "sufficient to create a genuine issue of fact on the issue of palpable unfitness." *In re Welfare of J.A.K.*, 907 N.W.2d 241, 245-46 (Minn. App. 2018); *see also In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014).

This court reviews an order terminating parental rights "to determine whether the district court's findings address the statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). "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), but this court gives "considerable deference to the district court's decision to terminate parental rights," *S.E.P.*, 744 N.W.2d at 385. We apply a clear-error standard of review to a district court's findings of historical fact and an abuse-of-discretion standard of review to a district court's ultimate finding as to whether a statutory basis for terminating parental rights is present. *In re Welfare of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

In the district court, the county invoked the statutory presumption of palpable unfitness based on the prior termination of T.J.C.B.'s parental rights to a different child. The district court concluded both that T.J.C.B. did not rebut the presumption and, in addition, that the county proved that T.J.C.B. is palpably unfit. On appeal, T.J.C.B.

challenges both of those conclusions. In response, the county argues primarily that this court should affirm on the ground that the county satisfied its burden of proving that T.J.C.B. is palpably unfit. At oral argument, the county clarified its position by stating that this court should consider that issue first. Consistent with the county's position, we will assume without deciding that T.J.C.B. rebutted the presumption, and we will proceed to determine whether the district court erred by determining that T.J.C.B. is palpably unfit.

The district court's ultimate finding that T.J.C.B. is palpably unfit is based on numerous findings of underlying fact. The most significant findings of fact are that, at the time of trial, T.J.C.B. had not successfully completed out-patient chemical-dependency treatment, did not have a permanent residence, had been employed only sporadically, was detained at the county jail on felony charges, had been hospitalized recently for mental-health issues with concerns of possible suicide, had admitted to continued use of controlled substances, and did not want to work with the county on reunification efforts.

T.J.C.B. argues that the county's evidence is insufficient to support the district court's determination that she is palpably unfit. She emphasizes her success in taking care of the children during the two-week period when they were still in the hospital, her success during her supervised visits for a few weeks after that, her progress in a parenting course, her employment, her pursuit of mental-health treatment, and her participation in chemical-dependency treatment. T.J.C.B. also argues that she "was not given a chance to establish that she was a capable parent" because the county commenced termination proceedings so soon after the children were born.

In a termination-of-parental-rights case, "a district court abuses its discretion if it makes findings unsupported by the evidence or when it improperly applies the law." *In re Welfare of M.A.H.*, 839 N.W.2d 730, 740 (Minn. App. 2013) (quotation omitted). In this case, T.J.C.B. introduced some evidence favoring her opposition to the petition. But her evidence relates mostly to periods of time when the children were in the hospital or in foster care, when T.J.C.B. did not have custody of the children, with full responsibility for caring for them. That period of time preceded her relapse and her voluntary discontinuation of inpatient treatment. The county introduced voluminous evidence in support of its petition, which related more directly to the circumstances present at the time of trial. The district court found the county's evidence to be persuasive. The district court did not abuse its discretion by crediting and relying on the county's evidence rather than T.J.C.B.'s evidence.

Thus, the district court did not err by concluding that T.J.C.B. is palpably unfit.

II. Best Interests

T.J.C.B. also argues that the district court erred by concluding that the termination of her parental rights would be in the children's best interests.

If a statutory basis for termination of parental rights is present, the paramount consideration is the best interests of the child. Minn. Stat. § 260C.301, subd. 7; *In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 672 (Minn. 2008). A district court may not order the termination of parental rights without determining that the termination is in the child's best interests. *S.E.P.*, 744 N.W.2d at 385. A best-interests analysis should include consideration and evaluation of "all relevant factors," Minn. Stat. § 260C.511(a) (2022),

including "a review of the relationship between the child and relatives and the child and other important persons with whom the child has resided or had significant contact," Minn. Stat. § 260C.511(b). This court has identified three factors that must be balanced when considering a child's best interests: "(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." *J.R.B.*, 805 N.W.2d at 905 (quotation omitted); *see also* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). This court applies an abuse-of-discretion standard of review to a district court's determination that the termination of parental rights is in a child's best interests. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 657 (Minn. App. 2018); *J.R.B.*, 805 N.W.2d at 905.

In this case, the district court noted that both the county social worker and T.J.C.B.'s mother testified to their opinions that the termination of T.J.C.B.'s parental rights would be in the children's best interests. The guardian *ad litem* read into the record a written statement expressing the same view. The district court found that T.J.C.B. "is not in a position where she can take care of and ensure the safety and stability [the children] deserve." The district court found that "[t]he children's need for stability, proper care, and safety outweigh the children's and Mother's interest in preserving the parent-child relationship." The district court concluded that the termination of T.J.C.B.'s parental rights would be in the children's best interests.

T.J.C.B. argues that the evidence does not support the district court's conclusion. She relies on her evidence that she loves the children, that she cared for the children well at the hospital and at her supervised visits, that she has "established a bond with" them,

that she was making progress in resolving her issues when the county filed its TPR petition, and that there is no evidence that she behaved inappropriately or created an unsafe condition for the children.

Again, the district court received conflicting evidence on the issue of best interests. T.J.C.B. testified that she believes that terminating her parental rights is not in the children's best interests. But the county presented the testimony of two other witnesses who gave contrary testimony. The county social worker testified that her opinion is based on her concerns about the children's "safety and well-being," T.J.C.B.'s "continued substance use, mental-health needs, [and] lack of safe and stable housing." Similarly, T.J.C.B.'s mother testified that her opinion is based on her concern that the children would not be safe in T.J.C.B.'s care. The district court's conclusion with respect to the children's best interests is consistent with the caselaw. For example, in *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703 (Minn. App. 2004), this court affirmed a district court's best-interests determination based on similar evidence, which indicated that the child's "immediate need for permanency as well as stable, nurturing, drug-free caretakers outweigh[ed] any competing interests." *Id.* at 711.

Thus, the district court did not err by concluding that the termination of T.J.C.B.'s parental rights would be in the children's best interests.

In sum, the district court did not err by granting the county's petition and terminating T.J.C.B.'s parental rights to the children.

Affirmed.