STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1742, A22-1794

In the Matter of the Welfare of the Children of:
A. M. T., n/k/a A. M. B., and M. B. B., Jr., Parents.

Filed June 20, 2023
Affirmed
Worke, Judge

Otter Tail County District Court
File No. 56-JV-21-2726

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Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Hooten, Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

In these consolidated appeals, appellant-parents challenge the district court's termination-of-parental-rights (TPR) order, arguing that the district court relied on a statutory basis for TPR that was not pleaded in the TPR petition, and that they are not palpably unfit parents. Mother argues that she rebutted the presumption that she is palpably unfit, and father argues that the record does not support the district court's finding that the agency made reasonable reunification efforts. We affirm.

FACTS

In 2017, appellant-mother A.M.B.[1] had her rights to her child involuntarily terminated. In August 2020, mother gave birth to G.M.B. Appellant-father M.B.B., Jr., was the presumed father; the parties were not married at the time.[2]

On November 9, 2021, respondent Otter Tail County Department of Human Services (the agency) petitioned to terminate mother's parental rights because of the 2017 TPR. In its petition, the agency stated that when a social worker met with mother, 14-month-old G.M.B. had ongoing bacterial infections due to improper care. The social worker also observed family members yelling at and hitting G.M.B. for age-normal behaviors. Mother was pregnant at the time but denied being pregnant. Additionally, she had tested positive for THC, refused other drug testing, and missed prenatal appointments.

[1] F/k/a/ A.M.T.

[2] Mother and father married in March 2022.

G.M.B. was immediately placed in protective care. Following an emergency protective-care hearing, the district court ordered that G.M.B. continue out-of-home placement. The district court found that parents

> were not at home when the [a]gency went to serve the emergency order and retrieve the child, but the child was heard . . . inside the apartment. The [a]gency and law enforcement had waited for [15] to [20] minutes attempting to get a response from any individuals inside the child's residence but did not gain access to the apartment until [mother]'s stepfather came out from his apartment three to four units away to see what was going on in the hall. . . . [Mother] and [father] had been in [mother]'s parents['] . . . apartment down the hall without properly monitoring or tending to the child. Once inside the home, the child was found crying, soiled, and alone in his drop-side crib.

The district court ordered the agency to file an out-of-home-placement plan. On December 3, 2021, the agency filed a plan signed by mother and father. Under the plan, mother and father were (1) referred for parental-capacity assessments; (2) required to remain free of mood-altering substances, complete chemical-use assessments, and comply with random drug testing; (3) required to engage in a parent-education program; (4) required to engage in the Maternal Early Childhood Sustained Home Visiting program; and (5) expected to be honest and maintain communication with the agency. Mother was also required to attend prenatal appointments. The agency would make necessary referrals and offer parents assistance and guidance.

In late December 2021, mother gave birth to R.M.B. The agency filed an amended TPR petition, alleging that since the agency's involvement:

> Both parents continue to demonstrate lack of education on child development, supervision needs, and daily needs of a child. Parents need oversight and multiple recommendations and encouragement to follow through with making calls, appointments, and requesting visits with [G.M.B.] Parents are unable to keep track of their appointments and many times schedule two or three things at the same time. [Mother] had been attending parenting classes . . . and both parents have agreed to complete [p]arental [c]apacity [e]valuations, engage in ongoing drug testing, and engage in the Family Resource Program.
>
> Presently, however, there are no services that can be implemented to make it safe for the newborn baby to be in the parents' care. During Zoom and in-person visits with [G.M.B.], parents need direction on how to play with the child and are not prepared with necessary items for the child, such as diapers.
>
> Both parents tend to hold [him] and do not allow him to play and walk around. Both parents spend significant time talking with the supervisors on the visits and need redirection from staff to direct their attention back onto the child.
>
> . . . .
>
> [Mother] has not been forthright with information to the [a]gency, has demonstrated inability or unwillingness to care for the child's basic medical needs, and concerns regarding the intellectual functioning of both parents [are] present. With the threatened[-]injury presumption of the prior [TPR] and the present circumstances related to the children, there are no available means presently to prevent or eliminate the removal of the children from the family that would ensure their health, safety, and welfare.

On January 18, 2022, the district court filed an emergency protective-care order. The district court found that "[r]easonable efforts to prevent the children's out[-]of[-]home placement are not required" because of mother's prior TPR.

On February 15, 2022, the agency filed an out-of-home-placement plan, that mother and father signed, reiterating the requirements explained in the earlier plan. In March 2022, father was added as a party to the TPR matter.

In March 2022, the guardian ad litem filed a report. She stated that parents consistently attended supervised visits and were attentive during visits but cancelled some visits due to transportation issues. While parents had not completed a parental-capacity assessment, they participated in an online parenting class.

Also in March 2022, the agency filed a report updating the district court on its efforts. These efforts included creating and reviewing plans with parents, making referrals for services, assisting parents with problem solving, and encouraging parents to make progress. The report also noted that parents communicated with the agency, completed chemical-use assessments, satisfied random drug-testing requirements, attended parenting classes, and worked with a public-health nurse. The agency remained concerned about parents' understanding of child development, decision-making related to the children's needs, and inappropriate reactions. Mother, for example, put sugar on the baby's pacifier and a soft drink in his bottle. They also no-showed one visit and cancelled four.

At the end of April 2022, the agency again updated the district court on parents' progress. The public-health nurse working with parents noted that parents seemingly expected G.M.B. to have an older child's understanding, and that mother was unable to manage more than one child at once. While parents were more consistent with visits, parents left R.M.B. in his car seat for over an hour during one visit.

By mid-May 2022, parents had completed parental-capacity assessments. Their parenting abilities were considered "impaired" under the assessments. Mother did not appear to understand child development, parental structure, or supervision needs. And any correction in her ability "was likely to be complicated by [her] cognitive challenges," "mistrust of professional[s][,] and resistance to being fully forthcoming." Father was "not fully cooperative" and defensive, resulting in "insufficient evidence to establish diagnoses of mental illness or personality disorder." But father's functioning was described as "marginal" in his ability to independently support himself and his family and in his ability to provide structure, supervision, and care for the children. Father also "has significant cognitive limitations," which likely impacted his parenting ability. He did not appear to understand child development and parental supervision, posing safety risks to the children. The agency found it unlikely that mother and father would "show adequate progress within" six months.

In July 2022, the agency filed an amended TPR petition, alleging that TPR was appropriate under Minn. Stat. § 260C.301, subd. 1(b)(4) (2022), because parents were palpably unfit to parent the children. The agency also updated the district court on parents' progress with their out-of-home-placement plan. A family-resource worker had noted that parents often cancelled sessions with her. The worker also observed mother's irritability and parents' caregiver stress and constant conflict with each other.

In November 2022, following a trial, the district court filed a TPR order. The district court found that mother failed to rebut the presumption that she is palpably unfit, noting that, even after receiving over ten months of service, many of the initial concerns remained.

Additionally, mother "has not made reunification her top priority." For example, she delayed completing her parental-capacity assessment and failed to schedule mental-health appointments because she has "been busy."

The district court found that while father "ha[d] been more engaged" and cooperative and was not subject to the presumption of palpable unfitness, concerns for the children's best interests existed in father's care. Concerns included father's choice to remain with mother and his failure to "prioritize reunification" as "demonstrated by [his] late arrivals for visitation" and failure to arrange mental-health appointments. The district court concluded that the best interests of the children would be served by TPR.

The district court also concluded that parents are palpably unfit. The district court stated:

> [N]either parent has presented evidence [that] they have obtained the ability to successfully parent a child. Despite [the agency]'s provision of significant services, and the parents' compliance and engagement in the services, efforts have not been able to assist either parent in bettering their ability to parent these children . . . . While [mother] has changed some of her circumstances since the time of the prior involuntary [TPR], such as obtaining housing and being in a healthier relationship, she has not increased her functioning level and capacity to understand and appropriately respond to the children's needs from the levels she was at during the time of the prior involuntary [TPR]. Ongoing issues remain regarding her anger and outbursts, as well as both parents' ability to recognize and appropriately respond to the needs and cues of the children or identify and appropriately protect the children from safety risks and concerns.

These consolidated appeals followed.

DECISION

Parents challenge the TPR order in these consolidated appeals. "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 order an involuntary TPR when (1) a statutory basis for TPR exists under Minn. Stat. § 260C.301, subd. 1(b) (2022); (2) the agency made reasonable efforts toward reunification or such efforts were not required; and (3) TPR is in the children's best interests. *See In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). The agency must prove the statutory basis for termination by clear and convincing evidence. Minn. R. Juv. Prot. P. 58.03, subd. 2(a); *In re Welfare of Child of H.G.D.*, 962 N.W.2d 861, 873 (Minn. 2021).

We review the district court's findings of fact for clear error and review its determinations of whether a statutory basis for TPR exists and whether TPR is in a child's best interests for an abuse of discretion. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 17, 2012). A factual finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted). In reviewing for clear error, we do not "engage in fact-finding" or "reconcile conflicting evidence." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotation omitted); *see In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in juvenile-protection appeal), *rev. denied* (Minn. Dec. 6, 2021). When the record reasonably supports the district court's findings, "it is immaterial that the record might also provide a reasonable basis for

inferences and findings to the contrary." *Kenney*, 963 N.W.2d at 223 (quotation omitted). We will not conclude that the district court clearly erred "unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *Id.* at 221 (quotation omitted).

Statutory basis for TPR

Parents first argue that the district court abused its discretion by ordering the TPR based on a statutory basis not pleaded. The agency concedes that section 260C.301, subdivision 1(b)(5), was not pleaded as a basis for TPR. But the district court's order shows that the district court did not order the TPR based on section 260C.301, subdivision 1(b)(5), which provides for TPR after reasonable efforts following the child's placement "have failed to correct the conditions leading to the child's placement." Rather, the district court ordered the TPR after concluding that parents are palpably unfit to parent the children.

The district court stated: "It is presumed a parent is palpably unfit . . . upon a showing the parent's parental rights to one or more of the children were involuntarily terminated." *See* Minn. Stat. § 260C.301, subd. 1(b)(4). The district court concluded that mother failed to rebut the presumption of palpable unfitness. The district court further concluded that, despite the agency's "provision of significant services[,] . . . efforts have not been able to assist either parent in bettering their ability to parent" and parents failed to present evidence showing that they are able to successfully parent a child.

The district court's statement that the agency attempted to assist parents in "bettering their ability to parent," is not a conclusion that TPR is appropriate under section

260C.301, subdivision 1(b)(5). The district court found that the agency proved that TPR was appropriate under section 260C.301, subdivision 1(b)(4). The agency needed to prove that TPR was appropriate under one statutory basis. The district court did not err by relying on this statutory basis for TPR that was pleaded by the agency.

Reunification efforts

Father next argues that the agency did not make reasonable reunification efforts. Although the district court found that reasonable efforts were not required for mother, the agency did provide a plan for parents. *See* Minn. Stat. § 260.012(a)(2) (2022) (stating that reasonable efforts for reunification are not required when the parental rights of the parent to another child have been terminated involuntarily).

In December 2021, the agency created a plan that parents signed. The agency made referrals for parents' assessments and programs and provided parents assistance and guidance. The visitations and the mental-health appointment referrals were only a small part of the plan created by the agency. The agency continued working the plan with parents throughout early 2022. When parents cancelled visitations due to transportation issues, the agency worked with parents to remedy this problem. The agency continued to assist parents with problem solving and encouraged them to make progress.

The evidence showed that parents engaged in the plan, but their efforts were not enough to show a change in circumstances in the foreseeable future. Even though the agency provided assistance, parents did not make significant progress. The record shows that the agency attempted to assist father in reunification.

Presumption that mother is palpably unfit

Mother argues that she rebutted the presumption of unfitness. She claims that she showed that her circumstances are different than at the time of her prior TPR, she cared for G.M.B. for 14 months before he was removed from her care, and she did well with the baby simulator.

Under Minn. Stat. § 260C.301, subd. 1(b)(4), the district court must presume that a parent is palpably unfit if the parent's rights to another child were previously involuntarily terminated. But this presumption is "easily rebuttable" if the parent introduces evidence that could support a finding that the parent is able to care for the children. *In re Welfare of Child of J.A.K.*, 907 N.W.2d 241, 245-46 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Feb. 26, 2018). This "burden of production" means that mother "may rebut the statutory presumption merely by introducing evidence that would justify a finding of fact that [she] is not palpably unfit." *See id.* In deciding whether mother rebutted the presumption, the district court considered her evidence without weighing it against contrary evidence. *See In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445-47 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). If mother's evidence sufficiently rebutted the presumption, the agency would have to prove by clear and convincing evidence that she is, in fact, palpably unfit or that another statutory basis for TPR exists. *See J.A.K.*, 907 N.W.2d at 247-48.

The district court noted that mother's prior TPR occurred because her child had special needs, mother struggled with homelessness, mother was in an abusive relationship with the child's father, mother was unable to manage her frustrations regarding the child,

mother was unable to "recognize cues for eating or discomfort," and mother had lower intellectual functioning. The district court recognized that mother showed a change in "some of her circumstances . . . such as obtaining housing and being in a healthier relationship." But she failed to produce evidence that she "increased her functioning level and capacity to understand and appropriately respond to the children's needs." To the contrary, the district court identified "ongoing issues" regarding mother's "anger and outbursts," her "ability to recognize and appropriately respond to the needs and cues of the children," and her ability to "identify and appropriately protect the children from safety risks and concerns." The record supports the district court's findings. The district court properly considered only mother's evidence before concluding that she did not meet her burden of production.

Palpably unfit

Finally, parents argue that they are not palpably unfit. A district court may order TPR if it concludes that the agency proves 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).

The main concern is that parents are unable to care for the children. The district court concluded that the agency proved that parents "for the reasonably foreseeable future

[are unable] to care appropriately for the ongoing physical, mental, or emotional needs of the child[ren]." *See id.* The district court specifically found that parents are incapable of appropriate care "due to their lower intellectual functioning, unaddressed mental health, and inability to recognize and appropriately respond to the children's cues or needs for safety."

The record shows that mother and father completed parental-capacity assessments and had "impaired" ability to parent and lacked adequate understanding of child development, parental structure, or supervision needs. Evidence shows that parents have cognitive challenges that complicate their ability to parent, and their issues are compounded by their "mistrust," "resistance," uncooperativeness, and "defensiveness." According to parents' family resource worker, parents were unable to demonstrate appropriate and safe care for the children. The record supports the district court's conclusion that parents are palpably unfit. The district court did not abuse its discretion by ordering the TPR.

Affirmed.