*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A13-1151**

In the Matter of the Welfare of the Child of: A.C., Parent.

**Filed December 9, 2013**
**Affirmed**
**Halbrooks, Judge**

Hennepin County District Court
File No. 27-JV-13-2224

William Ward, Chief Hennepin County Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellant A.C.)

Michael O. Freeman, Hennepin County Attorney, John P. Betzler, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

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Considered and decided by Halbrooks, Presiding Judge; Peterson, Judge; and Ross, Judge.

**U N P U B L I S H E D O P I N I O N**

**HALBROOKS**, Judge

On appeal from the district court's termination of her parental rights (TPR), appellant A.C. argues that (1) she rebutted the presumption that she is a palpably unfit parent; (2) termination is not in the child's best interests; and (3) the district court erred by conducting the TPR trial within 30 days of the filing of the petition. We affirm.

## FACTS

In 2011, appellant's parental rights to her first child were involuntarily terminated. In that matter, the district court found that appellant needed to address issues relating to domestic violence, anger management, mental health, and parenting skills. She was subsequently directed by her social worker to address those issues should she want to parent a child in the future. Appellant has since failed to address these issues. On March 28, 2013, appellant gave birth to a second child, M.R. The termination of appellant's parental rights to M.R. is the subject of this appeal.

During her pregnancy with M.R., appellant was involved in several incidents of domestic violence. Appellant maintained contact with M.R.J., the alleged father of M.R., despite having obtained a no-contact order against him and his ongoing violent conduct against her. M.R.J. assaulted appellant three times during the pregnancy, including an instance when he struck appellant in the stomach.

Appellant's mental-health history includes untreated bipolar and schizoaffective disorders. During her pregnancy with M.R., appellant denied assistance that was offered to address her disorders. Appellant also failed to obtain consistent prenatal care and stopped seeing a doctor altogether by the seventh month of her pregnancy. Appellant also used alcohol and illegal drugs while pregnant with M.R.; during a hospital visit she tested positive for THC.

On March 28, 2013, appellant gave birth to M.R., and respondent Hennepin County Human Services and Public Health Department (the department) placed a "health and welfare hold" on the child. On April 2, 2013, the department filed a TPR petition,

alleging that appellant is palpably unfit to be a parent pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4) (2012).[1]

At a pretrial hearing, the district court found that the petition asserted a prima facie case for termination and that, because of appellant's prior TPR, the department was not obligated to provide reasonable efforts to unite appellant with M.R. Finding that M.R. was in need of protective care, the district court ordered that M.R. be placed in an out-of-home setting pending trial.

The district court held a trial on the TPR petition on May 3, 2013. A.B., the department social worker who worked with appellant during and after her previous TPR, testified that she prepared a voluntary case plan for appellant following the filing of the TPR petition in this matter. A.B. testified that the case plan was identical to the one from the previous TPR in 2011 and was designed to address appellant's ongoing needs with respect to domestic violence, mental health, and parenting skills. A.B. further stated that although she repeatedly stressed that appellant had to maintain contact with her throughout the TPR proceedings, appellant failed to do so. Appellant also failed to attend meetings, complete parenting and psychological assessments, and return a signed case plan. A.B. opined that it is in M.R.'s best interests to terminate appellant's parental rights. The district court found A.B.'s testimony credible.

A court-appointed guardian ad litem testified on M.R.'s behalf. The guardian ad litem also opined that termination of appellant's parental rights was in M.R.'s best

[1] The department subsequently amended the petition to include a ground that would terminate any rights of the alleged biological father. It was accepted without objection and is not relevant to this appeal.

interests due to appellant's inability to address her mental-health and domestic-violence issues, inconsistent communication with her social worker despite appellant's awareness of the importance of maintaining that contact, continued contact with an abusive individual despite a no-contact order in place against him, and appellant's loss of safe and suitable housing. The district court found this testimony credible.

Appellant testified that she used alcohol and drugs during her pregnancy, stopped seeking prenatal care when she was seven months pregnant, and was in the process of being evicted from her housing. She testified that she did not complete her case plan because "she was running the streets" but stated that she had changed since the previous TPR and is now ready to be a parent. The district court found that credible evidence from other sources undermined the credibility of appellant's assertion that she has changed her lifestyle since the previous TPR.

The district court issued an order terminating appellant's parental rights pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4). The district court concluded that clear and convincing evidence established that appellant is palpably unfit to parent and found that termination is in M.R.'s best interests. This appeal follows.

**D E C I S I O N**

**I.**

We will affirm a district court's decision to terminate parental rights if at least one statutory ground for termination is proved by clear and convincing evidence and if termination is in the child's best interests. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). "We give considerable deference to the district court's decision

to terminate parental rights. But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted).

A district court may terminate parental rights if the 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." Minn. Stat. § 260C.301, subd. 1(b)(4). Typically, the petitioning party bears the burden of proving palpable unfitness by clear and convincing evidence. Minn. Stat. § 260C.317, subd. 1 (2012); Minn. R. Juv. Prot. P. 39.04, subd. 2(a). But a presumption of palpable unfitness arises when a parent's rights to another child have already been involuntarily terminated. Minn. Stat. § 260C.301, subd. 1(b)(4). In those circumstances, the parent bears the burden of producing evidence to rebut the presumption. *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 412 (Minn. App. 2011), *review denied* (Minn. July 28, 2011).

To overcome the presumption of unfitness, "a parent must introduce sufficient evidence that would allow a factfinder to find parental *fitness*." *In re Welfare of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007). Specifically, the parent must "affirmatively and actively demonstrate her or his ability to successfully parent a child." *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 251 (Minn. App. 2003); *see also In re Welfare of Child of J.W.*, 807 N.W.2d 441, 446-47 (Minn. App. 2011) (presumption overcome where parent submitted ample evidence that she had made significant improvement in her parenting

skills, established a more stable living environment, and had access to a greater support network), *review denied* (Minn. Jan. 6, 2012).

Appellant does not dispute her parental rights were involuntarily terminated in a previous case and that consequently she is presumed palpably unfit to parent. Without specifically challenging the district court's factual findings, appellant argues that the district court erred by concluding that the evidence does not rebut this presumption.

Appellant asserts that she demonstrated parental fitness by meeting with A.B. at the beginning of the TPR process, visiting M.R. during the pendency of the trial, and by reaching out to two community organizations. But "[i]n order 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." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009). The circumstances which appellant cites in support of her assertion that she is ready to parent M.R. do not demonstrate appellant's ability to successfully parent. Nor do they overcome the uncontroverted evidence that appellant has failed to improve her parenting skills and address her issues with domestic violence and mental health, circumstances that impeded her ability to successfully parent in the past. Further, appellant has not rebutted the ample evidence that she continues to associate with unsafe persons. Notably, appellant maintained contact with M.R.J., the alleged father of M.R., during her pregnancy despite knowing of M.R.J.'s status as a gun-carrying member of the "Bloods," a street gang that engages in violent conduct. Appellant continued to see M.R.J. even after he assaulted her while she was two months pregnant and, again, when she was three months pregnant.

Appellant also argues that she should be deemed fit to parent because she did "nearly everything in her power" to avail herself of the services offered by the department. The record belies that assertion. After the TPR petition was filed, appellant failed to maintain consistent contact with her social worker despite being advised that doing so "was critical to demonstrating her professed interest in reunification and her ability to parent her child." The department fostered open lines of communication by providing appellant the paperwork to obtain a free phone and a free bus card so that she could attend appointments required in her case plan. Despite this provision of services, appellant never filled out the paperwork and missed appointments that were considered critical to execution of her case plan. To the extent that appellant did utilize services available to her, the evidence remains insufficient to demonstrate that appellant can successfully parent.

The evidence supports the district court's finding that appellant did not carry her burden to rebut the statutory presumption of palpable unfitness. Accordingly, the district court did not err by terminating appellant's parental rights.

**II.**

Appellant challenges the district court's determination that termination of her parental rights is in the best interests of the child. Even if a statutory ground for termination exists, "a child's best interests may preclude terminating parental rights." *D.L.D.*, 771 N.W.2d at 545 (quotation omitted). Analyzing the best interests of a child requires a balancing of the child's interest in preserving a parent-child relationship, the parent's interest in preserving that relationship, and any competing interest of the child.

*In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.* "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2012).

The district court concluded that M.R.'s interest in a safe, stable environment and adequate care outweighs appellant's desire to parent the child. We agree. The record establishes that appellant is unable to care for M.R. presently or in the foreseeable future because she has failed to address known obstacles to her ability to successfully parent—the ongoing exposure to violent persons and domestic violence in the home, untreated mental-health disorders, lack of parenting skills, and lack of safe and stable housing.

Appellant contends that termination of her parental rights could not be in M.R.'s best interests because she was in good standing with her probation officer and did not have any recent "run-ins" with the law. This evidence does not establish that M.R.'s bests interests are served by remaining in appellant's custody. Appellant's good standing with probation, while commendable, does not overcome the child's paramount interest in receiving adequate care.

Because M.R.'s need for a safe, stable environment outweighs appellant's competing interest in parenting the child, the district court did not err by concluding that terminating appellant's parental rights is in M.R.'s best interests.

**III.**

Appellant challenges the district court's decision to hold the TPR trial on May 3, 2013, arguing that the law requires trial on a later date. Although counsel for appellant

stated at oral argument that appellant raised this argument to the district court, the record contradicts that assertion. Appellant neither raised this issue at the pretrial hearing when the trial date was determined nor by posttrial motion. In fact, it was appellant's counsel at the pretrial hearing who proposed May 3 as the date of trial. The issue is therefore waived on appeal. *See In re Welfare of K.T.*, 327 N.W.2d 13, 16-17 (Minn. 1982) (stating the "well settled" principle that a party may not raise for the first time on appeal a matter not presented to and considered by the district court); *In re Welfare of Child of S.S.W.*, 767 N.W.2d 723, 733 (Minn. App. 2009) (limiting appellate review in a juvenile-protection matter when there was no motion for a new trial to the factual findings, sufficiency of the evidence, and substantive legal issues properly raised during trial).

Even if appellant had preserved the issue for appellate review, her argument that the district court held the trial too quickly following the TPR filing is without merit. The district court has broad discretion to determine the procedural calendar of a case. *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982). When a TPR petition is filed pursuant to Minn. Stat. § 260C.301, subd. 3(a), as it was here, "the [district] court shall schedule a trial . . . within 90 days of the filing of the petition." Minn. Stat. § 260C.178, subd. 1(i) (2012). In cases where reasonable efforts for reunification are not necessary, a trial is required within 90 days of the district court's prima facie finding on a TPR petition. Minn. R. Juv. Prot. P. 4.03, subd. 6. Here, the district court held the termination trial within 90 days of the petition filing and the district court's prima facie finding. It was well within the district court's discretion to do so.

**Affirmed.**