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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0949  
A18-1027**

In the Matter of the Welfare of the Child of:  
T. E. B. and D. A. H., Parents.

**Filed January 7, 2019  
Affirmed  
Klaphake, Judge\*  
Concurring specially, Rodenberg, Judge**

Pine County District Court  
File No. 58-JV-18-11

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Cynthia Bell, Pine City, Minnesota (guardian ad litem)

Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and  
Klaphake, Judge.

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

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

In these consolidated appeals, appellants T.E.B. (mother) and D.A.H. (father) appeal from the district court's order terminating parental rights to their child, H.D.H. Appellants argue that the district court erred by terminating their parental rights because they met the burden of production necessary to rebut the presumption of palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). Appellants also argue that the county did not present clear and convincing evidence of palpable unfitness. Father argues that the district court erred by finding that termination is in the child's best interests. We affirm.

### DECISION

We review the district court's findings of the underlying or basic facts for clear error, but its ultimate determination of whether a particular statutory basis for involuntarily terminating parental rights is reviewed for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). The district court based its decision to terminate appellants' parental rights on findings that appellants were palpably unfit to be parties to the parent-child relationship and the conclusion that termination of parental rights was in the best interests of H.D.H.

#### **1. Palpable unfitness**

Parental rights may be terminated if there is clear and convincing evidence:

[T]hat 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 . . . relationship . . . 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). “It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent’s parental rights to one or more other children were involuntarily terminated. . . .” *Id.* “The petitioning party bears the burden of proving palpable unfitness by clear and convincing evidence.” *In re Welfare of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012); *see also* Minn. Stat. § 260C.317, subd. 1 (2018).

When seeking to terminate parental rights due to palpable unfitness, the petitioner must prove “specific conditions existing at the time of the hearing that appear will continue for a prolonged, indefinite period and that are permanently detrimental to the welfare of the child.” *J.W.*, 807 N.W.2d at 446 (quotation omitted).

Here, the county’s petition alleged that appellants were palpably unfit to be parties to the parent-child relationship because both appellants previously had their parental rights to other children involuntarily terminated. Accordingly, the county was not required to provide reasonable efforts for rehabilitation and reunification. *See In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003) (“Upon a district court’s determination that a person’s parental rights to another child previously have been terminated involuntarily, reasonable efforts for rehabilitation and reunification are not required.”); *see also* Minn. Stat. § 260.012(a)(2) (2018). Appellants argue that they rebutted the presumption of palpable unfitness because they met the burden of production under *J.A.K.* *See In re Welfare of J.A.K.*, 907 N.W.2d 241, 246 (Minn. App. 2018) (stating that to rebut

the statutory presumption of palpable unfitness, the parent's evidence need only create a "genuine issue of fact"), *review denied* (Minn. Feb. 26, 2018). We review de novo a district court's determination as to whether a parent's evidence is capable of justifying a finding in his or her favor at trial. *Id.* But because the county presented clear and convincing evidence of appellants' palpable unfitness, we need not decide whether appellants rebutted the presumption. *See J.W.*, 807 N.W.2d at 447 (noting that once a party has successfully rebutted the presumption, the burden of persuasion shifts back to the county to prove palpable unfitness by clear and convincing evidence).

Appellants called several witnesses during the termination trial, but neither appellant presented evidence that they enrolled in parenting classes or addressed their mental-health concerns. In contrast, the county presented evidence that although appellants have made positive changes, there were still concerns with their ability to parent and provide basic care to an infant. The district court found that "[m]other's choice to take an old Percocet while pregnant without consulting her physician demonstrates [that] she is unable to understand the consequences of her actions" and noted that it "does not feel [that] the child would be safe in her care." The district court also found that "[t]here is no credible evidence in this record that [f]ather has appropriately addressed his chemical dependency, his anger and control issues, his propensity to commit domestic violence, or his lack of empathy."

The district court's detailed findings address mother and father's personal history, visits between appellants and the child, trial testimony, and the district court's credibility determinations. The record supports the district court's findings and its determination that

the county presented clear and convincing evidence that mother and father meet the statutory criteria of palpable unfitness.

## **2. Best interests of the child**

Father also argues that the district court erred in finding that termination of parental rights was in the best interests of the child. We review a district court's best-interests determination for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905. When analyzing a child's best interests, the court must consider the child's interest in preserving the parent-child relationship, the parent's interest in preserving the parent-child relationship, and any competing interest of the child. *Id.* "Competing interests include such things as a stable environment, health considerations and the child's preferences." *Id.* (quotation omitted). "Because the best-interests analysis involves credibility determinations and is generally not susceptible to an appellate court's global review of a record, we give considerable deference to the district court's findings." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012) (quotation omitted).

The district court found that mother and father's relationship continues to pose a safety risk to the child and noted the guardian ad litem's testimony that the child is flourishing in the child's current foster home. Termination of appellants' parental rights will not necessarily end the parent-child relationship, as the guardian ad litem testified that a family member expressed interest in adopting the child and allowing mother and father to contact the child. We defer to the district court's best-interests determination because the record supports that determination.

Accordingly, we conclude that the district court did not abuse its discretion in finding that termination is in the child's best interests.

**Affirmed.**

**RODENBERG**, Judge (concurring specially)

I concur in the opinion of the court, but write separately to note my concern that, if a parent successfully rebuts the presumption of palpable unfitness under Minn. Stat. § 260C.301, subd. 1(b)(4) (2018), that parent may have an equal-protection right to reasonable efforts to reunify despite the provision of Minn. Stat. § 260.012 (2018) to the contrary. I would not reach that issue here because I am unconvinced that the presumption of unfitness has been rebutted on these facts, despite the presumption being “easily rebuttable” under *R.D.L.* See *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014) (stating that the presumption of palpable unfitness is easily rebuttable).

Although not couched in equal-protection terms, mother argues that, “if [she] met the burden of production, [she] is entitled to a case plan for the purposes of reunification.” Mother’s assertion is contrary to the express language of Minn. Stat. § 260.012, but might find some support in the Minnesota Supreme Court’s jurisprudence.

In *R.D.L.*, the Minnesota Supreme Court considered the constitutionality of the presumption of parental unfitness after an involuntary termination under Minn. Stat. § 260C.301, subd. 1(b)(4). 853 N.W.2d at 136. The supreme court upheld the presumption against an equal-protection challenge, in significant part because it determined that the presumption is “easily rebuttable.” *Id.* at 137. A number of earlier opinions of this court had held that the presumption is not easily rebuttable. See *In re Welfare of J.A.K.*, 907 N.W.2d 241, 245 n.1 (collecting cases and noting that the *R.D.L.* opinion stands in contrast to our previous decisions suggesting that in order to rebut the statutory presumption, a parent must affirmatively and actively demonstrate his or her ability to parent a child). My

reading of *R.D.L.* convinces me that the supreme court's determination of the ease with which the presumption of unfitness can be rebutted was necessitated by the equal-protection challenge raised in that case. A stronger presumption might well have violated the parent's equal-protection rights. Our most-recent post-*R.D.L.* opinion notes that our earlier decisions suggesting that the presumption has more weight are now in doubt. *Id.*

Juxtaposed against *R.D.L.* is the provision in Minn. Stat. § 260.012(a)(2), dispensing with the need for the agency to make reasonable efforts to reunify in cases where “a petition has been filed stating a prima facie case that . . . the parental rights of the parent to another child have been terminated involuntarily.” Minn. Stat. § 260.012(a)(2). Under section 260.012, all that needs to be shown to dispense with the reasonable-efforts-to-reunify requirement is that *the petition state a prima facie case* of a previous involuntary termination. *Id.*

After *R.D.L.*, it is easy to envision an equal-protection argument that a parent who, at trial, rebuts the presumption of unfitness should then also be entitled to the same reasonable efforts toward reunification to which other parents are entitled. If a parent rebuts the unfitness presumption at trial, then the parent seems to me to be in the same legal position as a parent who has not had her rights to a previous child involuntarily terminated. And the reasoning in *R.D.L.* at least suggests that section 260.012(a)(2) should be interpreted to afford reunification efforts to parents who have rebutted the presumption of unfitness after a prior involuntary termination.

As I see things, we need not reach that question in this case because, unlike in *J.A.K.*, these parents did not rebut the presumption under Minn. Stat. § 260C.301, subd. 1(b)(4).

To be sure, there is some language in the district court's termination order that can be read as suggesting that the district court weighed the evidence presented by the parents when it should have assumed that evidence to be true under our holding in *J.A.K.* But, careful examination of its findings convinces me that the district court was not weighing the evidence. It was instead focusing on whether the evidence produced here was of the sort produced in *J.A.K.* And the district court's careful and record-supported consideration of the evidence produced here convinces me that the district court was faithful to the relevant caselaw authorities. The evidence produced in response to the statutory presumption here was not of the sort produced in *J.A.K.*, where the mother rebutted the presumption through evidence that she had consulted with a psychiatrist and begun taking depression medication, had completed a parenting assessment, was participating in individual and group therapy and dialectical behavioral therapy, was more clear-headed and gaining insight on her communication skills, and acknowledged her volatile relationship with the child's father. *J.A.K.*, 907 N.W.2d at 246-48.

Had the parents here produced the type of presumption-rebutting evidence produced in *J.A.K.*, we would be called upon to wrestle with the interplay between Minn. Stat. §§ 260.012(a)(2) and 260C.301, subd. 1(b)(4), the supreme court's decision in *R.D.L.*, and our holding in *J.A.K.* But the record evidence is insufficient to reach that question here.