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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0780**

In the Matter of the Welfare of the Child of: J. D. and B. D., Parents.

**Filed October 14, 2019
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-JV-18-1978

Viet-Hanh Winchell, Galowitz Olson PLLC, Lake Elmo, Minnesota (for appellant-mother J.D.)

John J. Choi, Ramsey County Attorney, Kayla M. Rodriguez, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Social Services Department)

Nicole Turner, St. Paul, Minnesota (guardian ad litem)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's termination of her parental rights to her child. She argues that the district court erred in concluding that she failed to rebut the statutory presumption that she is palpably unfit to be a party to the parent and child

relationship and abused its discretion in determining that termination of her parental rights is in the child's best interests. We affirm.

FACTS

Appellant-mother, J.D., gave birth to a child, J.L.D., in 2018. The following day, the Minneapolis Police Department placed the child on a 72-hour protective hold. Respondent Ramsey County Social Services Department (RCSSD) petitioned for termination of mother's parental rights. The district court issued an ex parte order for emergency protective care and held an emergency-protective-care hearing. The district court granted emergency protective care of the child to RCSSD and relieved RCSSD of the requirement to make reasonable efforts to reunify the child with mother, based on the prior involuntary termination of mother's parental rights to her first child. A trial on the petition to terminate mother's parental rights was held on April 15, 2019. RCSSD also petitioned to terminate the parental rights of father, B.D. That petition was tried separately from the petition to terminate mother's parental rights.

The district court concluded that mother failed to rebut the presumption of palpable unfitness and that termination of mother's parental rights is in the child's best interests. Based on those conclusions, the district court terminated mother's parental rights to the child. The district court established the following factual record in support of its decision.

Mother gave birth to her first child in 2017. That child tested positive for opiates and methamphetamine at the time of birth and experienced withdrawal symptoms due to prenatal exposure to drugs. Mother admitted that she had used heroin throughout her pregnancy. She also told Anoka County Child Protection that she had used drugs and

alcohol for years and that she began using heroin daily almost immediately after meeting father about three years earlier. Based on this information, the district court determined that mother's first child was in need of protection or services, and it granted temporary legal custody of that child to Anoka County Child Protection. The district court ordered mother to participate in a case plan with tasks aimed at reunification. In an attempt to comply with the case plan, mother entered a chemical-dependency treatment program, but she left the program the next day. She then began a methadone program, but she never completed the intake process. Also, she failed to submit urinalysis (UA) samples and a psychological evaluation, as required by the case plan. Because of mother's noncompliance with the case plan, Anoka County Child Protection filed a petition for termination of mother's parental rights. The district court involuntarily terminated mother's parental rights to her first child on March 26, 2018.

Later in 2018, mother gave birth to the child who is the subject of this proceeding. She told medical professionals that she used heroin daily and that her most recent heroin use was on the day of the child's birth. The child experienced withdrawal symptoms due to her prenatal exposure to drugs. Mother informed RCSSD that she used heroin daily during her pregnancy and that she did not receive any prenatal care.

At the underlying termination trial, mother admitted that she continued to use heroin while the current case was pending. Although she testified that she wanted to become sober, she also stated that she had used heroin at least once a week since the child's birth, including the week before trial.

Mother entered three chemical-dependency treatment programs between the child's birth and the trial. She left the first program after approximately one month, and the second program after three days. Most recently, she entered treatment at Anoka Women's Transformation House on April 3, 2019, just 12 days before trial. In that time, mother took three UA tests, all of which were positive. Mother's individual treatment plan from Transformation House indicated that she lacked relapse-prevention skills and coping skills to change primary life areas. Mother also used a methadone clinic from the end of October 2018 until the end of January 2019, when she relapsed. She returned to the clinic in late March 2019 and was attending it daily at the time of trial.

Mother admitted that she has a history of unstable housing. Before she entered Transformation House, she was homeless. Mother testified that, once she finished treatment, she and the child would be able to move in with her mother, but only if she were sober. She also stated that, if she completed inpatient treatment at Transformation House, she would like to enter outpatient treatment. But she had not made specific plans regarding outpatient treatment.

Mother had some opportunities to parent the child. She frequently visited the child at the hospital during the first couple of weeks after the child's birth. When she left her first treatment program in early December 2018, she visited the child less frequently, until she began treatment at Transformation House in early April 2019. Mother has never independently parented the child, nor did she independently parent her first child. She admitted that her chemical use significantly interfered with her ability to parent the child.

The social worker and the assigned guardian ad litem testified at trial that the child was healthy and thriving in foster care. The child was bonding with her care providers and her biological sister (mother's first child), with whom she lived in the foster home. The social worker and guardian ad litem each opined that termination of mother's parental rights is in the child's best interests.

Based on that factual record, the district court concluded that mother's "history of drug abuse, failed treatments, continued use, and poor coping and relapse prevention skills indicate that she has not sufficiently mitigated the conditions that led to child protection involvement and that she will not be able to parent in the reasonably foreseeable future." Accordingly, the district court ruled that mother had failed to rebut the presumption of palpable unfitness. It then found that termination is in the child's best interests and terminated mother's parental rights to the child. Mother appeals.

D E C I S I O N

I.

A district court may involuntarily terminate parental rights if, among other things, it finds by clear and convincing evidence that a statutory basis for termination exists. Minn. Stat. § 260C.317, subd. 1 (2018). Upon finding that a statutory ground for termination exists, the district court does not automatically terminate parental rights; rather, the district court has discretion and also must find that termination is in the child's best interests. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136-37 (Minn. 2014). One statutory ground for termination is that the parent is palpably unfit to be a party to the parent and child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). "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 statutory presumption is a rebuttable presumption that shifts the burden of production to the parent. *In re Welfare of Child of J.A.K.*, 907 N.W.2d 241, 245-46 (Minn. App. 2018), *review denied* (Minn. Feb. 26, 2018). The parent must produce evidence that could support a finding that the parent is suitable to be entrusted with the care of the child. *R.D.L.*, 853 N.W.2d at 137. If the parent introduces such evidence, then the “presumption is rebutted and has no further function at the trial.” *J.A.K.*, 907 N.W.2d at 246 (quotation omitted). Whether a parent's evidence satisfies the burden of production must be determined on a case-by-case basis. *Id.* We apply a de novo standard of review to the district court's determination as to whether the parent presented evidence sufficient to rebut the statutory presumption. *Id.*

Because mother's parental rights to her first child were involuntarily terminated, mother is presumed to be palpably unfit, and she bore the burden of production to rebut that presumption. Mother argues that the evidence she presented at trial was sufficient to rebut the presumption of palpable unfitness. Specifically, she relies on evidence that she made efforts to find chemical-dependency treatment programs in which she could succeed, that she enjoys spending time with the child, and that no one at RCSSD had any issues with her behavior during her visits with the child.

Again, mother had to produce evidence that could support a finding that she is suitable to be entrusted with the care of the child. *See R.D.L.*, 853 N.W.2d at 137. Evidence

that mother made efforts to find treatment programs, that she enjoys spending time with the child, and that her behavior was acceptable while visiting the child in supervised and controlled environments is not sufficient to support such a finding.

Mother also argues that the district court erred in finding that she did not rebut the presumption because the district court found that the child's father, B.D., had successfully rebutted his presumption of palpable unfitness and denied the petition to terminate his parental rights. That argument is unavailing because the district court determines whether a parent's evidence satisfies the burden of production on a "case-by-case basis." *J.A.K.*, 907 N.W.2d at 246 (quotation omitted). Therefore, the district court's determination in father's case is irrelevant to its determination in mother's case.

In sum, mother did not present evidence that could justify a finding that she is suitable to be entrusted with the care of the child. The district court therefore did not err in finding that she failed to rebut the presumption of palpable unfitness.

II.

Mother argues that the district court erred in concluding that termination of her parental rights is in the child's best interests. Even if a statutory basis for termination of parental rights exists, a district court cannot terminate parental rights unless it is in the best interests of the child. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). "In analyzing the best interests of the child, the court must balance three factors: (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." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn.

App. 1992). We review the district court's determination that termination is in the child's best interests for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

Generally, a court presumes that it is in the best interests of the child to be in the custody of his or her natural parent. *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980). Nevertheless, the child's competing interests include a stable environment. *R.T.B.*, 492 N.W.2d at 4. In balancing the three factors, "the interests of the parent and child are not necessarily given equal weight." *Id.* "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2018).

Here, the district court determined that termination of mother's parental rights is in the child's best interests after balancing the three relevant factors and considering the opinions of the social worker and guardian ad litem. There is ample evidence in the record to support that determination. The trial evidence showed that mother continued to use heroin on a weekly basis and was not able to overcome her chemical dependency, despite her many attempts at treatment. Furthermore, her housing situation was uncertain. In contrast, the testimony of the social worker and guardian ad litem indicated that the child was healthy, making progress, and bonding with her biological sister in her foster home. Although mother and the child have an interest in preserving the parent-child relationship, the child's competing interest in a stable environment outweighs that interest. On this record, the district court did not abuse its discretion in determining that termination of mother's parental rights to the child is in the child's best interest.

Affirmed.