

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2000**

In re the Matter of the Welfare of the Child of: L. R. D., Parent.

**Filed April 27, 2020
Affirmed
Reilly, Judge**

Sibley County District Court
File No. 72-JV-19-93

Scott L. Nokes, Glencoe Law Office, Glencoe, Minnesota (for appellant mother L.R.D.)

Jennifer L. Thompson, JLT Law & Mediation, Litchfield, Minnesota (for respondent father S.M.G.)

Considered and decided by Reilly, Presiding Judge; Smith, Tracy M., Judge; and
Schellhas, Judge.*

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

REILLY, Judge

On appeal from the district court's grant of respondent-father's private petition to terminate appellant-mother's parental rights, mother argues that (1) the record does not show that she abandoned the child, (2) she rebutted the presumption that she is palpably unfit to parent, and (3) termination of her parental rights was not in the child's best interests. We affirm.

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

FACTS

Mother and father are the biological parents of K.P.G. who was born in 2010. Mother and father's marriage was dissolved in 2013. In 2016, father was granted sole legal and physical custody of K.P.G. and mother was granted supervised parenting time.

In April 2018, based on mother's drug use, Meeker County Social Services sought to terminate mother's parental rights to her older child, K.L.S., on the grounds that (1) mother substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent-child relationship; (2) mother was palpably unfit to be a party to the parent-child relationship because of a consistent pattern of specific conduct or specific conditions; (3) reasonable efforts failed to correct the conditions leading to the child's placement out of the home; and (4) the child was neglected and in foster care. Prior to the county's filing of the termination petition, the district court relieved the county of its obligation to make reasonable efforts to correct the conditions leading to the out-of-home placement. The district court found that further efforts were futile, given mother's noncompliance with her case plan, her refusal to meet with her case workers, her failure to demonstrate sobriety and her continued, active use of methamphetamine. The district court involuntarily terminated mother's parental rights to K.L.S. in August 2018. Following the termination of mother's parental rights, father, who is not K.L.S.'s biological father, adopted K.L.S. Father, K.L.S., and K.P.G. currently live together.

In August 2019, father petitioned for the involuntary termination of mother's parental rights to K.P.G. on the grounds that mother abandoned K.P.G. and that mother is palpably unfit to be a party to the parent-child relationship. At the trial on father's petition,

the district court heard testimony from four witnesses, including father, mother, and two friends of mother. The district court incorporated the August 2018 findings of fact, conclusions of law and order terminating mother's parental rights to K.L.S.

Father testified that in 2014, when K.P.G. was four-years-old, K.P.G. was present at mother's home during a "drug raid" and K.P.G. answered the door. Father explained that after this incident, K.P.G. was diagnosed with post-traumatic stress disorder and abandonment issues. Since then, K.P.G. has undergone two years of "intense trauma therapy" and is currently doing well, has completed all of his trauma and abandonment therapies, and is no longer in therapy. Father explained that the last visit between mother and K.P.G. occurred in 2015 before he was granted sole custody of K.P.G. in 2016. He also stated that since 2017, mother has not requested to see K.P.G., nor asked about his well-being, health or schooling. Father testified that in his opinion, contact between mother and K.P.G. would "probably throw [K.P.G.] back into therapy." Father also testified that K.P.G. has not requested to see mother and that K.P.G. "doesn't remember" mother.

Mother testified that she has her "life going on track" and while she has had chemical dependency issues in the past, she has been sober for 11 months. She explained that she maintains sobriety by "[l]ooking forward to [her] kids." Mother testified that she has been involved in the Narcotics Anonymous and Alcoholics Anonymous programs (NA/AA) since "September 3 [of] this year"—approximately two months before trial in this matter, but mother did not provide any documentation to support this. She also testified that she recently submitted all of her paperwork and completed her initial appointment with a mental-health professional, but again did not provide any documentation to support this.

Mother explained that she lives with G.W., who has been helping her complete a workbook and that she and G.W. work on “critical thinking” and how to make better decisions. She stated that she has done “[d]ifferent exercises and coping skills” and has done “[a] lot of self-help stuff” to address her mental health. Mother also conceded that she has three felony convictions on her record and that there are two charges pending against her. She explained that she had recently entered an *Alford* plea to a theft-of-a-motor-vehicle charge. Finally, mother testified that prior to living with G.W., she was in custody at the Wright County jail.

G.W. testified on mother’s behalf and stated that they had known each other for approximately two and a half months at the time of trial. G.W. explained that she has been working in mental health and chemical dependency for over 30 years as an advocate and social worker. G.W. did not provide any information about her education, training or professional licenses. G.W. explained that she has “very little knowledge” of mother’s history with chemical dependency but has no reason to believe mother currently has chemical dependency issues. Finally, G.W. testified that while she is not “treating” mother as one of her clients, she is a facilitator of a “wellness recovery reaction plan,” and that she and mother have been working together on a wellness plan and workbook to help mother alleviate stress in her life.

C.C. also testified on mother’s behalf. C.C. has known mother since 2014. C.C. testified that mother is “a good mother in general” and is “always good with . . . kids.” The district court concluded that G.W.’s and C.C.’s testimony was of very limited value.

Following the trial, the district court involuntarily terminated mother's parental rights to K.P.G., finding that father had proved by "clear and convincing evidence that abandonment shall be presumed and does exist pursuant to Minn. Stat. § 260C.301, subd. 2(a)(1)," that mother failed to rebut the presumption of palpable unfitness, and that termination of mother's parental rights is in the best interests of K.P.G. Mother appeals.

D E C I S I O N

"To involuntarily terminate parental rights, the district court must find that at least one of the eight statutory conditions for termination exist[s]." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). The district court is afforded "considerable deference" regarding its termination-of-parental-rights decisions; however, appellate courts carefully inquire into the sufficiency of the evidence to determine whether it is clear and convincing. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted). On appeal from a district court's termination-of-parental rights order, "we will review the district court's findings of the underlying or basic facts for clear error, but we review its determination of whether a particular statutory basis for involuntarily terminating parental rights is present 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).

I. The district court did not err in concluding that mother failed to rebut the statutory presumption of palpable unfitness.

Mother challenges the district court's determination that she failed to meet her burden to overcome the presumption of palpable unfitness. Generally, "the natural parent is presumed to be fit and suitable to be entrusted with the care of his or her child." *In re*

Welfare of D.L.R.D., 656 N.W.2d 247, 250 (Minn. App. 2003). However, “[i]t 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.” Minn. Stat. § 260C.301, subd. 1(b)(4) (2018). The statutory presumption is “easily rebuttable” because it “imposes only a burden of production, which means that a parent may rebut the statutory presumption merely by introducing evidence that would justify a finding of fact that [the parent] is not palpably unfit.” *In re Welfare of J.A.K.*, 907 N.W.2d 241, 245-46 (Minn. App. 2018) (alternation in original) (internal quotations omitted). “[W]hether the evidence satisfies the burden of production is determined on a case-by-case basis.” *Id.* at 246 (quotation omitted). If the parent introduces evidence sufficient to “create a genuine issue of fact on the issue of palpable unfitness” then the statutory presumption is considered rebutted and it “has no further function at the trial.” *Id.* (citations omitted). The court of appeals will review de novo a district court’s determination regarding whether the parent has rebutted the statutory presumption. *Id.* (citing *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 446 (Minn. App. 2011), review denied (Minn. Jan. 6, 2012)).

Stating that mother “presented scant evidence to the Court that she has made substantial changes since her rights to another child were involuntarily terminated,” the district court concluded that mother failed to overcome the presumption of palpable unfitness. We agree.

Mother testified that she has attended NA/AA meetings, is maintaining sobriety and has attended one intake meeting with a mental-health professional to address her mental-

health needs. But mother did not provide any documentation to support her claims that she has completed a mental-health intake appointment or attended NA/AA meetings. And mother has not attended any treatment facility for her chemical-dependency issues despite the fact that she was previously diagnosed with severe cannabis and stimulant dependency and struggled to maintain sobriety during her previous child protection case.

In addition, mother's witnesses testified that mother does well with children and has completed self-help type lessons. But, the district court noted that G.W. did not "testify to any training or credentials which might give some weight to the program she is offering." And although C.C. testified that he had known mother since 2014 and had seen her with "her child on approximately three occasions," the record is clear that mother had not seen K.P.G. since 2015 or even asked about his well-being since 2017.

Finally, mother acknowledged that she had felony charges pending at the time of the TPR trial, as well as prior convictions on her record, and that she was recently incarcerated. Though the presumption of palpable unfitness is "easily rebuttable," we affirm the district court's determination that mother has not "introduc[ed] evidence that would justify a finding of fact that [she] is not palpably unfit." *J.A.K.*, 907 N.W.2d at 245-46. The district court did not err in concluding that mother failed to rebut the statutory presumption that she is palpably unfit to parent K.P.G. and the record substantiates that finding.

Because only one statutory basis for termination is required for involuntary termination of parental rights, we need not address whether the district court erred in terminating mother's parental rights on the ground that she abandoned K.P.G. *See Minn.*

Stat. § 260C.301, subd. 1(b) (2018); *see also* *L.A.F.*, 554 N.W.2d at 396 (stating that the district court must find at least one of the eight statutory conditions exists to involuntarily terminate parental rights).

II. The district court did not abuse its discretion when it determined that termination of mother’s parental rights is in K.P.G.’s best interests.

When a statutory basis for terminating parental rights under Minn. Stat. § 260C.301, subd. 1, is present, the best interests of the child is the “paramount consideration” in addressing whether to terminate parental rights. Minn. Stat. § 260C.301, subd. 7 (2018). When analyzing the child’s best interests, the district 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.” *J.R.B.*, 805 N.W.2d at 905; Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). “Competing interests include such things as a stable environment, health considerations and the child’s preferences.” *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992) (citation omitted). The court of appeals reviews “a district court’s ultimate determination that termination is in a child’s best interest for an abuse of discretion.” *J.R.B.*, 805 N.W.2d at 905 (citation omitted).

Although mother argues that it is not in the best interest of K.P.G. that her parental rights be terminated, she does not appear to challenge any of the district court’s best-interest findings or legal analysis. The district court concluded that termination of mother’s parental rights is in the best interests of the child. The district court weighed mother’s “object[ion] to the termination of her parental rights” against the fact that the child has

“expressed no interest in maintaining the parent-child relationship” with mother. The district court also considered the competing interest of the child, including “the harm which could occur to the child by reversing years of therapy to overcome the childhood trauma caused by [mother]” if K.P.G. and mother were to resume a parent-child relationship, and the effect that mother’s volatile behaviors, periods of incarceration, and ongoing criminal behaviors would have on K.P.G. The district court conducted the best-interest analysis in accordance with the relevant legal authority, and the district court’s findings are supported by the record. The district court did not abuse its discretion when it determined that it is in K.P.G.’s best interests that mother’s parental rights be terminated.

Affirmed.