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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0801**

In the Matter of the Welfare of the Child of:
M. A. M. and M. A. C., Parents.

**Filed January 18, 2022
Affirmed
Worke, Judge**

Grant County District Court
File No. 26-JV-21-46

Matthew P. Franzese, Wheaton, Minnesota (for appellant-mother M.A.M.)

Justin Anderson, Grant County Attorney, Elbow Lake, Minnesota (for respondent Grant County Social Services)

Kent D. Marshall, Barrett, Minnesota (for respondent-father M.A.C.)

Dawn Krump, Tintah, Minnesota (guardian ad litem)

Considered and decided by Bryan, Presiding Judge; Worke, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant-mother challenges the district court's order terminating her parental rights, arguing that she rebutted the presumption that she is a palpably unfit parent and termination is not in the best interests of the child. We affirm.

FACTS

In November 2018, appellant-mother M.A.M.'s and respondent-father M.A.C.'s parental rights to two of their children were involuntarily terminated in the state of Washington. In the Washington termination-of-parental-rights (TPR) order, the court found that mother was to address her chemical use, submit to random chemical testing, and obtain mental-health evaluations and follow treatment recommendations. Mother provided random samples, which tested positive for Tetrahydrocannabinol (THC). She also failed to satisfy any other requirement.

After the family moved to Minnesota, respondent Grant County Social Services (the department) learned of the Washington TPR. Records from Washington and the department's own subsequent involvement with the family include reports of (1) dirty children; (2) neglected children; (3) a dirty home; (4) father being a registered sex offender; (5) mother and father using methamphetamine around the children and taking them on "drug runs"; (6) mother and father's five-month-old baby dying due to hyperthermia; (7) children living in a condemned camper without a roof, water, or electricity; (8) drug paraphernalia lying around property; (9) mother and father refusing drug testing; (10) father physically abusing a child; (11) mother fleeing with the children leading to a high-speed chase; (12) mother and father refusing to work with agencies; and (13) neglect of the children's medical needs.

In February 2020, mother's and father's parental rights to their two other children were involuntarily terminated. The Minnesota district court in that case found that mother's claim that she cooperated with the responsible agency in the Washington matter

was contradicted by the Washington order. Additionally, mother failed to provide proof of stable employment, failed to address her mental health, refused drug tests, and failed to address her children's special medical needs. The district court found that mother's "testimony was contradictory and lacked credibility" and concluded that she did nothing to correct the conditions that led to the 2018 TPR in Washington.

In February 2021, mother gave birth to a baby boy (the child). Prenatal screening confirmed the presence of THC in the child's umbilical cord. One week after the child's birth, the department filed a petition for emergency protective care and to terminate mother's parental rights.¹ The department alleged that mother's parental rights should be terminated, pursuant to Minn. Stat. § 260C.503, subd. 2(4) (2020), because her parental rights to her other children were involuntarily terminated. The department requested that the child be placed in relative foster care with his four siblings where all of the children would be adopted. The district court issued an order for emergency protective care transferring custody of the child to the department.

In April 2021, the district court commenced a TPR trial. As the threshold issue, mother was to present evidence to rebut the presumption that she is a palpably unfit parent because her rights to her other children were involuntarily terminated. Mother had the burden to produce evidence that she addressed issues related to housing, parenting skills, employment, substance abuse, and mental health.

¹ Father's parental rights were involuntarily terminated. He has not filed an appeal.

Mother's landlord testified on her behalf, stating that she has been mother's landlord since March 1, 2021, and mother was in good standing. An employee from a non-profit organization that connects families with services testified that mother sought services in February. Mother initially sought infant-care supplies because she still had the child in her care. Mother then received certification in Cardiopulmonary resuscitation and took child-safety classes. The employee testified that mother was "very eager for education" and attended classes weekly. Mother's employer testified that mother has been a waitress for approximately two months, working 8-15 hours a week. He testified that mother is a reliable, hard worker.

Mother testified that on April 2, 2021, she was approved for medicinal cannabis. Mother testified that she underwent a chemical-use assessment but did not receive any recommendations for treatment. Mother claimed that she had a mental-health evaluation and attended counseling. Although mother claimed that she engaged in these services prior to the child's birth, documentation showed that she began services after the child's birth.

Mother testified that she and father were now married. Mother testified that she planned to continue living with father, stating that she was unaware that his sex-offender registration would require him to not reside with children. Mother asserted that father's drug tests were positive because someone at the department "tampered" with them. When asked how she changed since the 2020 TPR, she testified that she puts in more effort to show that she is a good mother.

The district court found that mother did not know that she was pregnant until two months before the child's birth; consequently, she did not provide evidence of prenatal

care. It found that mother failed to provide evidence of participating in counseling, therapy, or mental-health services despite being diagnosed with “a mental illness that is serious enough to require prompt intervention.” The district court did not find mother’s testimony credible and stated that her “attempts to paint herself as more successful and more involved in services than she truly is are troubling.” The district court stated that “little has changed” since the prior TPR orders and concluded that mother failed to rebut the presumption that she is an unfit parent.

The district court then received evidence to address the issue of the best interests of the child. The district court concluded that mother failed to correct the conditions leading to the prior TPR orders, including mental-health issues and an inability to “recognize and provide [her] children with necessary care.” The district court acknowledged that mother showed some effort, but found her efforts “suspect,” and her testimony “less than credible” because her effort did not begin until the child was removed from her care. The district court also found that there was no evidence of an established parent-child bond. The district court found that TPR is in the child’s best interests. This appeal followed.

DECISION

On appeal from a district court’s TPR order, we 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 Child. of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). “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 Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008) (citation omitted). The petitioner has the burden to show that a statutory ground exists for terminating parental rights. *In re Welfare of Chosa*, 290 N.W.2d 766, 769 (Minn. 1980).

The district court concluded that the department established by clear and convincing evidence the statutory ground of presumed palpable unfitness. A district court may terminate parental rights if it finds

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) (2020). A parent is presumed to be palpably unfit “upon a showing that the parent’s parental rights to one or more other children were involuntarily terminated.” *Id.* This presumption “is easily rebuttable.” *In re Welfare of Child of J.A.K.*, 907 N.W.2d 241, 245 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Feb. 26, 2018). The burden of rebutting the presumption

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 other words, a parent seeking to rebut the statutory presumption needs to produce only enough evidence to support a finding that the parent is suitable to be entrusted with the care of the [child].

Id. at 245-46 (quotations omitted).

Here, mother argues that she rebutted the presumption because she showed that she made suitable progress since the 2020 TPR. She claims that she obtained a chemical-use assessment, which recommended no treatment, and she passed drug tests; she obtained a mental-health assessment and sought therapy; and she found a home and employment. The district court determined that mother failed to rebut the presumption. We agree with the district court.

As the district court noted, when the 2020 TPR petition was filed, mother did not show that she did anything to correct the conditions that led to the 2018 TPR. Then, after the 2020 TPR, mother did not know that she was pregnant until two months before the child's birth. She did not receive prenatal care and used illegal drugs during her pregnancy. Mother sought educational services only after the child was removed from her care. And even though mother found a home, the evidence mother presented does not show that mother's living arrangement supports a determination that she is not palpably unfit. Specifically, mother plans to continue living with father, who had his parental rights involuntarily terminated, is a registered sex offender, and who has positive drug tests. On this record, the district court correctly determined that mother failed to rebut the presumption of unfitness.²

² The statutory presumption imposes only a burden of producing evidence that would justify a finding that mother is not palpably unfit. *J.A.K.*, 907 N.W.2d at 245-46. Mother had the burden to produce enough evidence to support a finding that she is "suitable to be entrusted with the care of the [child]." *See id.* at 246 (quotation omitted). The department's evidence at the rebuttal-of-the-presumption stage was irrelevant. Here, the district court considered whether mother's evidence created a genuine issue of fact regarding whether she is palpably unfit, and, in concluding that she failed to show that she is not palpably

Mother also argues that the district court abused its discretion in determining that TPR is in the child's best interests. If a statutory ground for TPR is proved, the paramount consideration in determining whether parental rights will be terminated is the best interests of the child. Minn. Stat. § 260C.301, subd. 7 (2020). "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); *see also* Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). "We review 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.

The district court determined that TPR is in the child's best interests because the child and mother do not have a bond—the child was a week old when he was removed from mother's care. The record shows that he has bonded with his current foster parents. Additionally, the child has an interest in a relationship with his siblings, which he will have if placed with the relative foster family. Finally, the district court concluded that mother failed to address her ongoing mental-health issues, and she has an inability to provide necessary care for the child. Mother failed to provide basic needs for her other children and neglected their special medical needs. The district court stated that the evidence failed to show "a genuine or long-term change in the conditions that caused the present or the

unfit, thoroughly explained how her evidence fell short of meeting that burden of production.

prior terminations.” The district court did not abuse its discretion by determining that it is in the child’s best interests to grant the TPR petition.

Finally, mother argues that, although the department is not required to develop a case plan, she should not be denied an opportunity to work a case plan. Under Minn. Stat. § 260.012 (a)(2) (2020), “[r]easonable efforts to prevent placement and for rehabilitation and reunification are always required except upon a determination by the court that a petition has been filed stating a prima facie case that . . . the parental rights of the parent to another child have been terminated involuntarily.” That is the case here.

The district court did not abuse its discretion by concluding that mother failed to rebut the presumption of unfitness, and TPR is in the child’s best interests.

Affirmed.