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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1881**

In the Matter of the Welfare of the Child of:
D. D. and W. H., Parents.

**Filed March 11, 2008
Affirmed
Kalitowski, Judge**

St. Louis County District Court
File No. 69HI-JV-07-151

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Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant D.D. challenges the district court's order terminating her parental rights to S.L.H. Appellant argues that (1) the district court's application of the statutory presumption of palpable unfitness violated the doctrine of collateral estoppel; and (2) the

record does not support termination of appellant's parental rights based on her palpable unfitness to be a party to the parent-child relationship. We affirm.

DECISION

I.

Appellant argues that the district court's application of the presumption of palpable unfitness in Minn. Stat. § 260C.301, subd. 1(b)(4) (2006), violated the doctrine of collateral estoppel because the court found that appellant successfully rebutted the presumption in 2005 at a prior termination of parental rights (TPR) trial. We disagree.

A district court may terminate a parent's custodial rights on the basis of one or more of the nine grounds listed in Minn. Stat. § 260C.301, subd. 1(b) (2006). One statutory ground for termination of a parent's rights is showing that the parent is "palpably unfit to be a party to the parent and child relationship." *Id.* Minn. Stat. § 260C.301, subd. 1(b)(4), creates a presumption of palpable unfitness that attaches if a parent has previously had his or her custodial rights to a different child involuntarily terminated or involuntarily transferred to a relative under section 260C.201, subdivision 11, paragraph (e), clause (1), or a similar law of another jurisdiction. *Id.* But this presumption is not absolute, and can be rebutted by evidence of a parent's current fitness. *See, e.g., In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 709 (Minn. App. 2004).

The doctrine of collateral estoppel "precludes parties from relitigating issues which are identical to issues previously litigated and which were necessary and essential to the former resulting judgment." *Aufderhar v. Data Dispatch, Inc.*, 452 N.W.2d 648, 650 (Minn. 1990). Whether collateral estoppel is available is a mixed question of law

and fact that we review de novo. *In re Trusts Created by Hormel*, 504 N.W.2d 505, 509 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993).

In order for collateral estoppel to be available, it must first be established that

(1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Johnson v. Consol. Freightways, Inc., 420 N.W.2d 608, 613 (Minn. 1988). But “[o]nce it is determined that collateral estoppel is available, the decision to apply the doctrine is left to the [district] court’s discretion.” *Hormel*, 504 N.W.2d at 509. And even if these prerequisites for application are met, a court may nonetheless decline to apply the doctrine if doing so would contravene public policy. *See AFSCME Council 96 v. Arrowhead Reg’l Corrs. Bd.*, 356 N.W.2d 295, 299 (Minn. 1984) (declining to apply the doctrine to decisions made at veteran’s preference hearings or labor arbitrations); *Loo v. Loo*, 520 N.W.2d 740, 743-44 (Minn. 1994) (discussing how changing circumstances, inherent in family law matters, limit the applicability of collateral estoppel). In addition, although a district court deciding whether to terminate a parent’s rights is charged with the task of looking at the “projected permanency of the parent’s inability to care for his or her child,” this assessment requires consideration of the parent’s past behaviors and conditions. *In re Welfare of S.Z.*, 547 N.W.2d 886, 893 (Minn. 1996) (quotation omitted).

Here, appellant concedes that she had prior involuntary terminations in both 1995 and 2002. It is also undisputed that in a 2005 TPR trial the district court found that

respondent invoked, and appellant successfully rebutted, the presumption of unfitness. But contrary to appellant's assertion, the mere fact that she successfully rebutted the presumption in 2005 does not preclude the presumption from applying at future proceedings. At the 2007 TPR trial, the district court was charged with considering appellant's past behaviors and conditions to determine the "projected permanency" of appellant's inability to care for her child. *Id.* Moreover, not applying the presumption in this context would be contrary to the policy behind Minn. Stat. § 260C.301, subd. 1(b)(4), and the policy in favor of court's making fully-informed termination decisions that give paramount consideration to the best interests of the child involved. *See* Minn. Stat. § 260C.001, subd. 3 (2006).

Furthermore, the doctrine of collateral estoppel is inapplicable here because, as a result of changed circumstances in appellant's life, the identical-issue requirement is not met: the issue of whether the presumption applied to the operative set of facts presented at appellant's 2007 TPR trial is not the same issue as whether the presumption applied in 2005. Although appellant appeared to be recovering from her drug problems in 2005, evidence presented at the 2007 TPR trial including an incriminating urinalysis indicated that appellant was once again using drugs despite her denial under oath. Also, while domestic abuse was an issue in 2005, the domestic violence continued into 2007 and escalated to include appellant's failure to protect her child from an environment where the child's father physically abused the child and the child regularly observed physical abuse between her parents. In addition, even though appellant's psychologist testified at both the 2005 and 2007 TPR trials, it was not until 2007 that he diagnosed appellant with

a personality disorder that indicated that it would be very difficult for her to cooperate with social services in completing any sort of case plan.

Because appellant's drug use, domestic violence, and psychiatric problems in 2007 made applicability of the presumption in 2007 a different issue from whether it was applicable at her 2005 TPR trial, and because applying collateral estoppel in this context would contradict the public policy behind the child-protection provisions of Minnesota's Juvenile Court Act, we conclude that the district court did not err in applying the statutory presumption of palpable unfitness to appellant. *See* Minn. Stat. § 260C.001, subds. 3, 4 (2006).

II.

Appellant contends that the district court abused its discretion in finding that there was sufficient evidence to support the termination of her parental rights. We disagree.

When reviewing a TPR decision, we determine “whether the [district] court’s findings address the statutory criteria and whether those findings are supported by substantial evidence and are not clearly erroneous.” *W.L.P.*, 678 N.W.2d at 709 (quotation omitted). As discussed above, one of the statutory grounds for terminating a parent’s custodial rights to his or her child is by showing that the parent is palpably unfit to be a party to the parent and child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4). A parent is presumed palpably unfit upon a showing that the parent’s rights to one or more other children were involuntarily terminated or involuntarily transferred. *Id.* Application of this presumption shifts the burden of proof to the parent to rebut the

presumption of palpable unfitness. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003).

Here, the district court appropriately applied the presumption of palpable unfitness at appellant's 2007 TPR trial, as there is undisputed evidence in the record showing that appellant previously had her rights to three other children involuntarily terminated. Accordingly, appellant had the burden of rebutting the presumption by proving her current fitness to parent. *See, e.g., W.L.P.*, 678 N.W.2d at 709. Appellant failed to do so here. Evidence at trial showed that appellant (1) continued to use drugs; (2) lied under oath regarding her drug use; (3) failed to protect her child from an environment where the child's father physically abused the child and the child regularly observed physical abuse between her parents; and (4) was diagnosed with a personality disorder that made her cooperation with social services unlikely. Thus, the record indicates that respondent presented sufficient un rebutted evidence to support the district court's finding that appellant was palpably unfit to parent.

Appellant argues that she was not given an opportunity to rehabilitate herself through the use of county services. But application of the presumption of palpable unfitness relieves the county of its duty to make reasonable efforts to reunite appellant and her child. Minn. Stat. § 260.012(a)(2) (2006) (explaining that "reasonable efforts" by the social service agency are not required when a parent's rights to another child have already been terminated involuntarily).

In sum, because the district court appropriately applied the statutory presumption of palpable unfitness, because appellant did not present sufficient evidence to rebut the

presumption of palpable unfitness, and because the county had no duty to make reasonable efforts to reunite appellant and her child, we conclude that the district court's decision to terminate appellant's parental rights was supported by the evidence and was not clearly erroneous.

Affirmed.