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STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0825

In the Matter of the Welfare of the Child of:
L. C. M., Parent.

Filed December 27, 2022
Affirmed
Cochran, Judge

Hennepin County District Court
File No. 27-JV-20-2944

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Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant-mother challenges the termination of her parental rights, arguing that the district court erred by (1) determining that mother failed to rebut the statutory presumption

that she is an unfit parent and (2) concluding that, even setting aside the presumption, clear and convincing evidence demonstrates that mother is palpably unfit to parent. We affirm.

FACTS

Appellant L.C.M. (mother) has six children. In 2017, mother's five oldest children were placed in foster care after they were adjudicated in need of protection or services. In 2019, the district court terminated mother's parental rights to her five oldest children based on its findings that mother's ongoing difficulties with domestic violence, chemical dependency, her mental health, criminal behavior, and ensuring safe and stable housing, directly impacted her ability to parent her children.[1]

On July 31, 2020, mother gave birth to her sixth child, L.W., who is the subject of this appeal. On August 11, the county petitioned for the termination of mother's parental rights to L.W. based on the involuntary termination of mother's parental rights to her five older children. *See* Minn. Stat. § 260C.503, subd. 2(a)(4) (2022) (requiring immediate petition for termination of parental rights (TPR) when a child's parent has lost parental rights to another child through an involuntary TPR). The petition stated that child-protection services had received a report that mother smoked marijuana daily while she was pregnant with L.W., and a report of threatened injury of L.W. based on the prior

[1] The district court terminated mother's parental rights on the following statutory grounds: (1) mother had substantially, continuously, or repeatedly refused or neglected to comply with her parental duties; (2) mother was palpably unfit to parent; (3) reasonable efforts to correct the conditions leading to the children's placement outside the home had failed; and (4) the children were neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4)-(5), (8) (2022). The district court also determined that termination of mother's parental rights was in the children's best interests.

TPR. In the petition, the county asserted that mother's alleged pre-natal exposure of L.W. to chemicals and mother's child-protection history were sufficient to support termination of mother's parental rights to L.W. on the ground that mother is palpably unfit to parent. *See* Minn. Stat. § 260C.301, subd. 1(b)(4). At an emergency protective-care hearing, the district court ordered the county to place L.W. in foster care and determined that the county was not required to make reasonable efforts to reunite the family due to the prior involuntary TPR.

Nonetheless, the county offered mother a voluntary case plan. The case plan required mother to address her chemical dependency and mental health issues, demonstrate that she could provide safe and stable housing for L.W., remain alcohol- and drug-free while with L.W., and "remain free of any domestic violence relationships that would put L.W. in danger." The case plan referred mother to services for housing, parenting education, counseling/therapy, and domestic violence programming. The case plan also provided for mother to have supervised visits with L.W. twice per week.

After mother worked her case plan for approximately 20 months, the case proceeded to a court trial in the spring of 2022. The district court admitted numerous exhibits and heard testimony from mother, two service providers who testified on mother's behalf, the county child-protection worker assigned to her case, a former guardian ad litem (GAL), and the current GAL. The testimony principally addressed the following areas relevant to mother's fitness to parent: chemical dependency, domestic violence, criminal behavior, and parenting skills.

Mother testified first. She told the court that she has "improved" as a person and mother since her last TPR case. She acknowledged that concerns existed in the prior case about her chemical dependency, mental health, unaddressed domestic violence, and criminal behavior that contributed to her parental rights being terminated. She testified that she has seriously engaged in therapy and a number of programs to address these concerns. She also acknowledged some ongoing challenges.

More specifically, regarding her issues with chemical dependency, mother admitted to relapsing twice after the TPR case was opened—her urinalysis (UA) results tested positive for cocaine in August and November of 2021. But she also testified that she had been sober since the last positive UA in November 2021 through the time of trial. And she stated that she was previously sober for two or three years, she complied with UA testing throughout the case, she completed chemical-dependency assessments after her relapses, she followed the resulting recommendations, and she participated in a chemical-dependency support group. Finally, she acknowledged that her substance use negatively impacts her parenting and that she engages in "more aggressive" behaviors while using chemicals.

With regard to criminal behavior, mother admitted to three separate incidents that led to police contact and criminal charges in the summer of 2021—after the TPR petition for L.W. was filed. One incident resulted in a citation for mother's disorderly conduct on a bus. Following a second incident, mother was charged with assaulting her own father, but mother disputed that characterization of their interaction, and the charge was ultimately dismissed. The third incident involved motor vehicle theft. Mother testified that, in

August 2021, her ex-husband picked her up in a car that turned out to be "a police bait car," and that she was subsequently charged with aiding and abetting motor vehicle theft. Mother later pleaded guilty to and was convicted of gross-misdemeanor motor vehicle theft.

Regarding concerns about domestic violence, mother understands that domestic violence is harmful to children. She acknowledged that she had been in an abusive relationship with her ex-husband for almost 20 years. She also testified that in July 2021, shortly before the alleged car theft, she had filed for an order of protection (OFP) against her ex-husband. But she still chose to interact with him in August 2021, believing that the OFP was not in effect because it had not yet been served on her ex-husband. Mother maintained that she had not had any additional contact with her ex-husband since August 2021. She further acknowledged that at least one incident of domestic violence had occurred in her new relationship with the presumed father of L.W. (hereinafter "L.W.'s father"). But she testified that she had not been in a relationship with L.W.'s father since he was incarcerated in late 2021. She testified that she "chose to fix the situation by getting out" of the relationship, though she still believed that L.W.'s father was an appropriate caretaker for L.W. In mother's view, "things ha[d] changed" and "improved" in terms of the prior concern about domestic violence—namely, she was taking therapy and domestic-violence programming seriously. And, since the prior TPR case, she had worked with a parent advocate, completed parenting and anger management classes, and engaged in multiple types of therapy to address issues of domestic violence.

Two social services providers also testified about mother's progress regarding the concerns identified in the prior TPR case. One provider, a psychiatric social worker, testified that she had known mother for several years and that mother regularly attended her weekly parenting class. The social worker testified that mother had shared her past struggles with domestic violence with the group and that mother has been able to work through those issues. The social worker also testified that she was aware that mother had previously participated in a domestic-violence class through the same clinic.

The other service provider, who manages a support group for women in recovery, testified that she met mother in December of 2021. Mother joined the support group and regularly attended its weekly meetings. According to the service provider, mother told the group that she was divorced, that her relationship with her ex-husband was not a healthy one, and that she wanted to "move forward." The service provider did not recall mother talking specifically about any domestic-violence situations. On cross-examination, the service provider testified that mother had never talked with the group about her relationship with L.W.'s father. The service provider also testified that mother had never talked about her struggles with chemical dependency or discussed her relapses; she focused more on getting basic support for daily life.

The primary child-protection worker assigned to mother's case testified about mother's history of involvement with child-protection services. The previous TPR case was opened after a domestic-violence incident during which one or more of mother's children were present and one young child was seriously injured. The child-protection worker testified that mother subsequently participated in domestic-violence programming

and parenting education but not chemical-health programming. The child-protection worker also testified that a number of no-contact orders were put in place during the previous TPR case that prohibited contact between mother and her ex-husband, but that mother did not comply with them.

Turning to the current TPR case, the child-protection worker explained that mother's case plan "essentially mirrored the case plan that she was offered in the case that ended in 2019 . . . because essentially the same issues continued." The child-protection worker testified that mother "had engaged in many services throughout the life of the case," including attending therapy sessions, participating in parenting groups, undergoing two chemical-dependency assessments, and completing several but not all requested UAs. She further testified that "there has been evidence and incidents throughout the case that indicate that [mother] has not learned or is not applying the skills that she has learned . . . to remedy the issues that led to this case opening." The child-protection worker was concerned that mother had not been truthful with her service providers about her positive UAs or her recent contact with her ex-husband and the resulting criminal charges, which raised continuing concerns about her ability to keep L.W. safe. The child-protection worker testified that, in her view, mother's "focus really was more on attending and complying [with the requirements of the case plan] rather than making insightful and integrated change[s] in her life." And she further noted that the same services had not made a difference in changing mother's behavior under the last case plan. She did acknowledge that mother was appropriate during supervised visits with L.W., but she also

testified that supervised visits do not necessarily reflect whether an individual is capable of safely parenting in an unsupervised setting on a day-to-day basis.

The child-protection worker also expressed concern that mother "still places herself in a position where domestic violence can occur" despite having completed several forms of programming and therapy to address domestic violence. The child-protection worker noted that mother continued to have contact with her ex-husband in the summer of 2021 despite petitioning the district court for an OFP against him. The child-protection worker also testified that mother filed a motion to vacate the OFP in March 2022 while the TPR trial was ongoing. The child-protection worker noted the reported incidents of domestic violence in mother's new relationship with L.W.'s father as well, incidents that resulted in assault charges against L.W.'s father and additional no-contact orders. The child-protection worker also testified that she had reviewed recorded jail calls between mother and L.W.'s father from February 2022 which indicated that they were still in an intimate relationship. The child-protection worker expressed concern that mother was "not recognizing that her relationship with [L.W.'s father] has the same components of domestic violence" as her relationship with her ex-husband.

Testimony from the GALs assigned to the case mirrored the child-protection worker's concerns. The GAL assigned to the case from April to December 2021 testified that, while she had no concerns about mother's ability to physically care for L.W., she did not trust that mother was being forthcoming with her service providers or that certain behaviors "going on behind the scenes" would not interfere with mother's ability to keep L.W. safe. The GAL was concerned about whether mother was serious enough about

keeping her ex-husband out of her life and about mother's positive UA results from 2021. The GAL currently assigned to the case also testified to his concerns about mother's ability to stay out of abusive relationships, though he acknowledged that mother's participation in services had helped with her overall stability.

On June 9, 2022, the district court filed an order terminating mother's parental rights to L.W. The district court noted the rebuttable presumption that a parent is palpably unfit to parent if their parental rights to one or more *other* children were previously involuntarily terminated. The district court determined that mother did not produce sufficient evidence to meet her burden of production to rebut the presumption that she is palpably unfit to parent. The district court further determined that even if the presumption did not apply, clear and convincing evidence supported the termination of mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(4) on the basis that she is palpably unfit to parent. The district court also determined that the termination of mother's parental rights was in the best interests of L.W.

Mother appeals.

DECISION

Parental rights should be terminated only "for grave and weighty reasons." *In re Welfare of Child. of B.M.*, 845 N.W.2d 558, 563 (Minn. App. 2014) (quotation omitted). When reviewing a district court's decision to terminate parental rights, we review the district court's factual findings for clear error, and 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).

Mother challenges the termination of her parental rights to L.W. on two grounds. First, she argues that the district court erred by determining that she did not rebut the statutory presumption that she is an unfit parent. Second, she argues that the district court erred by failing to make sufficient findings to support its alternative determination that, even without the presumption, clear and convincing evidence supports the termination of mother's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(4). We consider each argument in turn.

I. Any error by the district court in determining that mother failed to rebut the statutory presumption was harmless.

Mother argues that the district court erred by determining that she failed to rebut the presumption that she is palpably unfit to parent. We review de novo whether a parent has rebutted the presumption that they are palpably unfit to parent. *In re Welfare of Child of J.A.K.*, 907 N.W.2d 241, 246 (Minn. App. 2018), *rev. denied* (Minn. Feb. 26, 2018).

Courts must apply a presumption of palpable unfitness to parent "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). But this statutory presumption is "easily rebuttable." *J.A.K.*, 907 N.W.2d at 245 (quotation omitted). "The statutory 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." *Id.* at 245-46 (quotation omitted). In other words,

to rebut the presumption, a parent need only produce "enough evidence to support a finding that the parent is suitable to be entrusted with the care of the [child]." *Id.* at 246 (quotation omitted). If a district court determines that the evidence is sufficient to create a genuine issue of fact as to a parent's palpable unfitness, the statutory presumption is rebutted and has no further function at trial. *Id.* In other words, once the statutory presumption is rebutted, "the district court shall find the existence or nonexistence of the alleged palpable unfitness upon all the evidence exactly as if there never had been a presumption at all." *Id.* (quotation omitted).

Mother argues that the district court erred by applying "a stale standard" to determine whether she had rebutted the statutory presumption of palpable unfitness to parent. Noting the district court's statement that mother had to "affirmatively and actively demonstrate [her] ability to successfully parent a child," mother argues that the district court imposed a higher burden than the actual requirement that she produce only enough evidence to support a finding that she is suitable to be entrusted with the care of a child. *See id.* Mother further argues that the district court erred by weighing mother's evidence against the county's conflicting evidence in determining whether mother met her burden of production to rebut the presumption.

These arguments have merit. But any error by the district court in analyzing whether mother rebutted the statutory presumption is rendered harmless by the district court's separate analysis of the palpable unfitness question assuming that "the presumption did not apply." *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (declining to reverse a TPR decision for harmless error). In other words, even if the district court

erred when it concluded that mother had not rebutted the presumption, that error by itself is not grounds for reversal because the district court independently determined that clear and convincing evidence demonstrated that mother is palpably unfit to parent L.W. We address mother's challenge to that determination below.

II. The district court did not abuse its discretion by determining that clear and convincing evidence supports the termination of mother's parental rights.

Mother argues that, because she rebutted the presumption of palpable unfitness to parent, the district court's independent analysis of her fitness to parent is incomplete and the district court's findings "fail to adequately address the statutory criteria for termination" of her parental rights. We disagree.

Generally, we will affirm a district court's termination of parental rights when (1) "at least one statutory ground for termination is supported by clear and convincing evidence," (2) the county has made reasonable efforts to reunite the parent and child, and (3) termination is in the child's best interests. *In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

Mother challenges only the district court's determination that a statutory basis supports termination.[2] We review a district court's "determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion." *J.R.B.*, 805 N.W.2d at 901. We "review the district court's findings of the underlying or basic facts for clear error." *Id.* In doing so, "we view the evidence in a light

[2] Mother does not challenge the other two factors—reasonable efforts and the child's best interests.

favorable to the findings" and "[w]e will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted); *see In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* on appeal from a district court's termination of parental rights), *rev. denied* (Minn. Dec. 6, 2021). "But we closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *S.E.P.*, 744 N.W.2d at 385.

Here, the district court found that termination of mother's parental rights to L.W. was supported by clear and convincing evidence of mother's palpable unfitness to parent. A district court may terminate parental rights based on palpable unfitness if it determines

> 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). "The petitioning party bears the burden of proving palpable unfitness by clear and convincing evidence." *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012).

The district court determined that clear and convincing evidence shows that mother is palpably unfit to parent because of her "longstanding pattern of involvement in domestic violence, criminal behavior, and struggles with chemical dependency." The district court

further determined that mother "has not addressed these concerns in a way that gives this Court confidence in her ability to safely parent a child in the foreseeable future." The district court emphasized that mother continues to engage in unhealthy and abusive relationships, despite programming intended to help her learn how to engage in healthy relationships, and presents "ongoing concerns for chemical abuse and criminal actions relating to the parent and child relationship."

Mother argues that the district court's determination that she is palpably unfit fails to conform to the statutory criteria. More specifically, mother contends that the district court failed to find, as required by Minn. Stat. § 260C.301, subd. 1(b)(4), that mother is palpably unfit to parent because of (1) a specific condition, (2) directly related to the parent-child relationship, (3) that existed at the time of trial, (4) that would continue for a prolonged, indefinite period, and (5) that was permanently detrimental to the child. *See In re Welfare of Child. of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). We are not persuaded.

The district court's order reflects that the court made the requisite findings to support termination of mother's parental rights. The order includes numerous, detailed factual findings regarding mother's ongoing difficulties with substance abuse, domestic violence, and criminal activity. Those findings include, among others, that: mother had only intermittent success maintaining sobriety after the TPR case was opened; she incurred multiple criminal charges in 2021; she was still in contact with her abusive ex-husband when the TPR case was opened and this contact led to additional domestic-violence incidents; mother eventually agreed to obtain an OFP against her ex-husband but chose not to abide by it and later moved to dismiss the OFP while the TPR trial was ongoing;

mother's new relationship with L.W.'s father also involved incidents of domestic violence, but mother testified that she still believed he was an appropriate caretaker for L.W.; and mother testified that she had ended her relationship with L.W.'s father, but the evidence contradicted that testimony.

And, based on those factual findings, the district court ultimately determined that mother is palpably unfit to parent because her "pattern of continued engagement in unhealthy and abusive relationships . . . constitutes specific conditions in combination with ongoing concerns [about] chemical abuse and criminal actions relating to the parent and child relationship of a duration and nature that render [mother] unable for the foreseeable future to care appropriately for . . . the child." The district court thus noted (1) a pattern of conduct or specific conditions, (2) existing at the time of trial, (3) related to the parent-child relationship, (4) that would continue for a prolonged, indefinite period, and (5) that was permanently detrimental to the child. *See* Minn. Stat. § 260C.301, subd. 1(b)(4); *T.R.*, 750 N.W.2d at 661.

The district court's findings are fully supported by record evidence. First, with regard to substance abuse, the record shows that mother relapsed on cocaine at least twice while the TPR case was open even though mother was actively working towards addressing her chemical dependency. Mother acknowledged at trial that chemical use negatively impacts her ability to parent. Second, regarding criminal behavior, the record shows that mother was charged with multiple crimes while the TPR case was open, including stealing a "police bait car" with her ex-husband. Third, despite being involved in programing to

address domestic violence, the record shows that mother continued to have contact with her ex-husband and L.W.'s father, both of whom were abusive to mother.

We also note that, in reaching its determination that mother is palpably unfit to parent, the district court credited the testimony of the child-protection worker and the two GALs, who testified that the possibility of mother's continuing involvement in cycles of domestic violence remained a significant concern that impacted her ability to parent for the foreseeable future. The district court also determined that the two service providers testified credibly on mother's behalf, but that their testimony was "limited in its helpfulness" because neither provider was familiar with many of mother's circumstances. We defer to the district court's credibility determinations. *See In re Welfare of Child. of S.R.K.*, 911 N.W.2d 821, 831 (Minn. 2018) (noting that "[c]onsiderable deference is due to the district court's decision to terminate parental rights because a district court is in a superior position to assess the credibility of witnesses" (quotation omitted)).

And record evidence supports the concerns of the child-protection worker and the GALs regarding mother's involvement in cycles of domestic violence. The record shows that mother was in contact with her ex-husband even after she filed an OFP against him. And mother filed a motion to dismiss the OFP against her ex-husband in March 2022, while the TPR trial was ongoing. Similarly, record evidence shows that mother had contact that suggested an ongoing relationship with L.W.'s father just weeks before trial even though mother testified that she was no longer in a relationship with him. This evidence, in combination with mother's testimony that she considers L.W.'s father an appropriate caretaker for L.W. despite his history of domestic violence and criminal behavior, supports

the district court's concern that mother's involvement in abusive relationships continues to impact her ability to safely parent L.W.

We conclude that the record fully supports the district court's determination that, even without the statutory presumption, mother is palpably unfit to parent because her "pattern of continued engagement in unhealthy and abusive relationships," chemical use, and criminal behavior render her "unable for the foreseeable future to care appropriately for the ongoing physical, mental, and emotional needs" of L.W. The district court therefore did not abuse its discretion by terminating mother's parental rights to L.W. on that ground.

Affirmed.