STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0306
A12-0307

In the Matter of the Welfare of the Child of:
R. L. M. and T. A. P., Sr.,
Parents.

Filed July 30, 2012
Affirmed
Ross, Judge

Hennepin County District Court
File Nos. 27-JV-11-8508;
27-JV-10-11862

Mark D. Nyvold, St. Paul, Minnesota (for appellant mother R.L.M.)

William Ward, Hennepin County Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellant father T.A.P., Sr.)

Michael O. Freeman, Hennepin County Attorney, Michelle A. Hatcher, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

John Jerabek, Niemi, Jerabek & Kretchmer, Minneapolis, Minnesota (for guardian ad litem)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Hooten, Judge.

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

ROSS, Judge

The district court terminated R.L.M.'s and T.A.P.'s parental rights to infant D.M., deeming both palpably unfit to parent the child, among other reasons. Both parents are

presumptively unfit to parent because they were the subjects of a previous involuntary termination of their parental rights to another child. Because the district court did not abuse its discretion by finding that T.A.P. and R.L.M. failed to rebut the presumption of palpable unfitness or by finding that termination of parental rights is in D.M.'s best interest, we affirm.

FACTS

R.L.M. gave birth to D.M. in November 2010 while she was jailed in Hennepin County. During her pregnancy with D.M. before her incarceration, R.L.M. smoked marijuana and crack cocaine daily and prostituted herself. She has used drugs throughout her life since age eleven and she has supported her drug habit through prostitution. Hennepin County petitioned the district court in early December 2011 to terminate R.L.M.'s parental rights. The termination petition included T.A.P., who was D.M.'s presumed father.

R.L.M. and T.A.P. had another child together previously. They were parents to T.P. Jr. Their parental rights to T.P. Jr. were involuntarily terminated in February 2009. R.L.M. has had three other children, but her legal and physical custody to them had been transferred from her.

The district court placed D.M. in foster care and granted Hennepin County interim legal custody. Hennepin County child protection worker Mary Kay Libra met with R.L.M. in December 2010 and developed a case plan intending for her to transform into a fit parent. The plan required R.L.M. to complete a chemical-health treatment program and follow all of the recommendations including aftercare; complete a mental health

assessment or psychological evaluation; follow the recommendations of a mental-health provider including individual therapy and medication; complete a designated program for prostitution recovery and follow the recommendations; complete a parenting education program; remain law abiding and follow any probation requirements; cooperate with the child protection social worker and guardian ad litem; obtain and maintain safe housing; and make appointments for and attend to any medical, mental health, or educational needs of D.M. The plan also ordered R.L.M. to complete a domestic violence program and follow the recommendations because she had reported domestic abuse by T.A.P. R.L.M. agreed to follow the plan.

Libra included T.A.P. in the case plan, requiring him to establish paternity, complete a chemical-health assessment and follow all recommendations, complete a domestic-violence program, cooperate with the child-protection social worker and guardian ad litem, and complete a parenting assessment or parenting education program or both.

The district court found D.M. to be in need of protection or services and transferred her legal custody to Hennepin County. It incorporated the case plan into its order, adding that both R.L.M and T.A.P. must submit to random urinalyses.

Neither parent fulfilled the obligations of the case plan.

R.L.M. had initial but limited success. She completed a chemical health assessment and dependency treatment while she remained incarcerated. And after she was released, she completed primary chemical dependency treatment. But she failed to complete the aftercare program. She completed a mental health assessment and attended

several therapy sessions, but she soon quit when she was no longer housed in the program's facility. She attended only eight of sixteen domestic-abuse counseling sessions, so she was discharged from the program in August 2011. She began parenting education while incarcerated and continued while she was housed in a care facility, but she did not complete the prostitution recovery program.

Because of R.L.M.'s initial case-plan success, on June 7, 2011, the district court authorized a conditional trial home visit for D.M. in the aftercare facility. And on June 30, the district court ordered D.M. to continue in R.L.M.'s care under protective supervision.

The success was short-lived. R.L.M. relapsed into drug use on July 4, 2011. At about that same time, she reported another domestic incident with T.A.P. Then on July 24, she left the care facility with D.M. and dropped her off with T.A.P. As a result, the district court issued an emergency protective-care order placing D.M. in a children's shelter and later in foster care.

The care facility discharged R.L.M. on August 1, 2011, after she failed to return. She completed another assessment on September 14, 2011, in which she described her daily drug use as "an all day process." She expounded, "I get up and start looking. Once I use, I sit for a couple hours, then it's off to the races again." She reported that she was homeless and that two days earlier she had gone to the hospital after T.A.P. choked her, lifted her off the ground, and repeatedly punched her in the head while both of them were on drugs.

R.L.M. attempted inpatient chemical dependency treatment in October 2011, but she was discharged on December 2 because of misconduct. Two weeks before the termination trial in December 2011, her urinalysis revealed cocaine use. Her two immediately previous urinalyses also indicated cocaine use.

T.A.P. similarly did not follow his case plan. He established his paternity by signing a recognition-of-parentage form. When he completed an assessment on February 28, 2011, he reported that he uses drugs "[e]very day, all day—getting, using, and getting over the use of cocaine and marijuana," that he has been to treatment seven times, that he is unemployed, and that he is homeless. He entered and completed primary chemical dependency treatment, but he failed to complete the aftercare segment. He attended the first three parenting education sessions, but he was dropped in August 2011 for failure to attend. He attended no domestic-abuse sessions. T.A.P. returned to drugs again in July 2011, and that same month, R.L.M. successfully petitioned the district court for an order for protection against him on her behalf and on D.M.'s behalf.

T.A.P. never reengaged his case plan. He admitted to using cocaine with R.L.M. in December 2011, not long before trial. He missed nine scheduled urinalyses and tested positive for cocaine in the two that occurred just before trial. According to T.A.P., he completed another assessment in November 2011, and on December 8, 2011, he put himself back into an inpatient treatment facility, where he claimed he was residing at the time of trial.

Two weeks after the December 21, 2011 trial, the district court terminated R.L.M.'s and T.A.P.'s parental rights to D.M. It found that R.L.M. had failed to follow

her case plan because she had failed to remain sober, she missed several therapy sessions, failed to complete domestic abuse counseling, failed to complete prostitution recovery services, and failed to maintain contact with D.M. It also found that she is presumed to be unfit due to the previous termination of her parental rights and that she failed to rebut that presumption.

The district court found that T.A.P. had failed to follow his case plan because he was dismissed from the domestic abuse program for failing to attend, he failed to attend parenting education classes, he failed to complete chemical dependency treatment, he failed to submit to urinalyses as required and recently tested positive for cocaine, and he had not visited D.M. since August 13, 2011. It found that T.A.P. failed to rebut the presumption that he is palpably unfit to parent D.M.

The district court found clear and convincing evidence that R.L.M.'s and T.A.P.'s parental rights should be terminated and that termination is in D.M.'s best interests. Both parents filed unsuccessful motions for a new trial, and both parents appeal.

D E C I S I O N

R.L.M. and T.A.P. both challenge the district court's decision to terminate their parental rights. We review the district court's decision to terminate parental rights to determine whether it addressed the statutory criteria and whether its findings are clearly erroneous. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). We review the district court's decision that a statutory basis for termination of parental rights exists 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). We will affirm a decision to

terminate parental rights if there is clear and convincing evidence to support at least one statutory ground for termination and the termination is in the child's best interests. *Id.* at 906. In this case, although the district court found multiple bases on which to terminate the parties' parental rights, we need only consider whether the district court acted within its discretion by concluding that R.L.M. and T.A.P. are presumptively unfit to parent D.M. and that termination is in D.M.'s best interests.

A parent's rights may be terminated if the 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) (2010). Usually, a natural parent is presumed to be a fit parent. *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250 (Minn. App. 2003). But the opposite presumption that a parent is "palpably *unfit* to be a party to the parent and child relationship" follows after that parent's parental rights to another child are involuntarily terminated. Minn. Stat. § 260C.301, subd. 1(b)(4) (emphasis added). In this case, that negative presumption against fitness applies to both R.L.M. and T.A.P., whose parental rights to T.P. Jr. were involuntarily terminated in 2009.

The parent presumed to be palpably unfit has the burden of production to rebut the presumption. *In re Welfare of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011). To meet that burden, "a parent must affirmatively and actively demonstrate her or his ability to

successfully parent a child" and a parent may do this by using "community resources to develop a plan and accomplish results that demonstrate the parent's fitness." *D.L.R.D.*, 656 N.W.2d at 251. We must decide whether the district court had a sufficient basis to find that neither parent rebutted the presumption of unfitness, and we consider this question de novo. *See J.W.*, 807 N.W.2d at 446.

We are satisfied that the district court properly determined that neither parent rebutted the presumption. Both parents agreed to services, but it is not enough to engage in services. *Id.* And their brief, early success in some programming is not compelling since the question of "whether a parent has rebutted the statutory presumption depends in part on whether a parent has presented evidence of his or her current circumstances" because termination of parental rights "must be based on the conditions that exist at the time of the termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *Id.* (quotation omitted).

R.L.M. failed even to appear for trial. She presented no evidence whatsoever to rebut the presumption that she is palpably unfit to parent D.M. Even after trial in her posttrial submissions, R.L.M. presented no evidence sufficient to rebut the presumption. Her motion included two letters—one from herself and one from the Women's Recovery Center. The Women's Recovery letter stated that R.L.M. joined the program on January 5, 2012, and had "made significant progress in several areas" over the 20 days she had been there (the chemical dependency program is 90 days long). R.L.M.'s own letter stated that she was "doing Great," and she detailed the programs that she was attending. These letters are far from the proof necessary to make a showing to rebut the presumption

of unfitness. That she allegedly was "doing great" and making "significant progress in several areas" at the onset of another program says little. She had previously attempted treatment repeatedly only to fail. More than this would be necessary to indicate sobriety, let alone fitness to parent. Even the threat of permanently losing D.M. did not motivate R.L.M. to abandon the drugs that precipitated D.M.'s placement away from her. Because R.L.M. failed to present any evidence demonstrating her ability to successfully parent D.M., the district court did not err by concluding that she has not overcome the presumption of palpable parental unfitness.

T.A.P. also failed to rebut the presumption that he is palpably unfit to parent D.M. He testified that he had completed an assessment in November shortly before trial and that in December he had entered Turning Point for chemical dependency treatment. He gave the district court no reason to believe his argument that he had "changed in significant and material ways" at Turning Point; he had been in the program only two weeks at the time of trial and he has unsuccessfully attempted treatment at least eight previous times. Between his November assessment and entering Turning Point a few weeks later, T.A.P. continued to use drugs as evidenced by his urinalyses.

T.A.P. argues that he has rebutted the presumption because a parenting report includes a social worker's characterization of him as a "very attentive father" who "appeared to understand his daughter's developmental needs" and who "was able to talk about how he plans to prepare for his child living with him" during parenting education sessions. T.A.P. adds that he had "scheduled" an orientation with the domestic abuse program and he is "newly enrolled" in the Fathers Project. But "talk[ing] about" plans

and "appear[ing] to understand" and being "very attentive" are hardly positive characteristics in the face of T.A.P.'s chronic, destructive, long-established nonparenting behavior. And the parenting program that produced these few favorable comments terminated T.A.P.'s enrollment because he failed to attend. Similarly, his mere plan to engage in programs is not a showing that challenges the presumption of his parental unfitness, particularly because he has left many unfinished programs in his wake.

The district court also did not abuse its discretion by concluding that termination of R.L.M.'s and T.A.P.'s parental rights is in D.M.'s best interests. After finding a statutory ground for termination, the district court must also find that termination is in the child's best interests. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 92 (Minn. App. 2012). The best interests of the child are the "paramount consideration" in a termination-of-parental-rights case. Minn. Stat. § 260C.301, subd. 7 (2010). We give deference to the district court's findings on this factor. *J.K.T.*, 814 N.W.2d at 92.

R.L.M. and T.A.P. argue that the evidence does not support the district court's conclusion that termination of their parental rights is in D.M.'s best interests. R.L.M. asserts that it is not in D.M.'s best interests to terminate her parental rights because she is emotionally connected to D.M., she has the motivation and desire to become a good parent, and she has made efforts to become a good parent. She also points to the positive interactions she had with D.M. before she relapsed and that "the curve of her progress has overall continued upwardly," including her most recent reentry into chemical dependency treatment. T.A.P. maintains that it is not in D.M.'s best interests to terminate his parental rights because he loves his daughter and wants to care for her. He supports his argument

with evidence from the parenting worker's report that he was an attentive father during sessions, he understood D.M.'s developmental needs at the time, and he talked about how he plans to prepare for D.M. to live with him. He also claims that he had reengaged in his case plan by seeking chemical dependency treatment and had "looked into other options available to him to make him a better father through the 'Father's Project.'"

R.L.M. and T.A.P. failed to offer anything more than representations of their claimed desires and plans to become good parents. Neither of them attempts to explain how D.M. would benefit by waiting for them to demonstrate that their representations are valid, and neither suggest why it is better for D.M. to continue to rely on them as her parents in their current parentally unfit condition. It is in D.M.'s interest to have sober, stable, law-abiding parents who will provide her a safe home and who are not recurrently on drugs, are not engaging in prostitution or abuse, and are provably willing to sacrifice their desire for fleeting personal gratification for the sake of their child. We see no evidence in the record tending to prove (let alone requiring the district court to find) that either R.L.M. or T.A.P. has a genuine interest in becoming a parent of that sort.

The record supports the district court's conclusion that terminating R.L.M.'s and T.A.P.'s parental rights is in D.M.'s best interests.

Affirmed.