STATE OF MINNESOTA
IN COURT OF APPEALS
A12-366

In the Matter of the Welfare of the Child of: C. Y. and R. S., Parents

Filed August 6, 2012
Affirmed
Willis, Judge[*]

Becker County District Court
File No. 03JV112324

Stuart J. Kitzmann, Detroit Lakes, Minnesota (for appellant C.Y.)

Steven Beitelspacher, Detroit Lakes, Minnesota (for parent R.S.)

Michael D. Fritz, Becker County Attorney, Tammy Merkins, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent Becker County)

Sheri Mitchell, Callaway, Minnesota (guardian ad litem)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Judge; and Willis, Judge.

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

WILLIS, Judge

On appeal from the termination of her parental rights, appellant-mother argues that (1) she rebutted the presumption that she is palpably unfit to parent and (2) the record

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

does not show that termination of her parental rights is in the child's best interests. We affirm.

FACTS

The child involved in this proceeding was born on September 20, 2011. Appellant C.Y. is the child's biological mother and R.S. is the child's adjudicated father.[1] On October 5, a child-protection investigator met with C.Y. and R.S. after respondent Becker County Human Services received a report that C.Y. had arrived at the human-services building staggering and smelling strongly of alcohol. C.Y. denied having been under the influence of drugs or alcohol, stating that she had been asleep in a car before entering the building and a friend had spilled alcohol in the car. The child was placed in emergency protective care under a peace officer's hold order, and C.Y. submitted to urinalysis and hair-follicle testing. C.Y.'s hair-follicle test was positive for methamphetamine.

The next day, Becker County filed a petition alleging that the child was in need of protective services under Minn. Stat § 260C.007, subd. 6 (2010). On October 18, 2011, the county filed a petition for termination of C.Y.'s parental rights under to Minn. Stat. § 260C.301, subd. 1(b)(4) (2010), alleging that C.Y. was palpably unfit to be a party to the parent-child relationship. A hearing was held on the termination petition, and the district court issued an order terminating C.Y.'s parental rights to the child. This appeal follows.

[1] R.S.'s parental rights are not at issue here.

D E C I S I O N

When reviewing a termination of parental rights, an appellate court must determine whether the district court's findings address the necessary statutory criteria and whether those findings are supported by substantial evidence and are not clearly erroneous. *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). While an appellate court gives considerable deference to the district court's decision to terminate parental rights, it nonetheless closely inquires into the sufficiency of the evidence to determine whether it meets the clear-and-convincing standard. *Id.* An appellate court will affirm a district court's termination of parental rights when clear-and-convincing evidence supports at least one statutory ground for termination and the termination is in the child's best interests. *Id.*

I. The district court did not err by finding that C.Y. did not rebut the presumption that she was palpably unfit to be a party to the parent-and-child relationship.

A district court may terminate a party's parental rights to a child if it finds that the party "is palpably unfit to be a party to the parent and child relationship." Minn. Stat. § 260C.301, subd. 1(b)(4). The petitioning party normally bears the burden of proving palpable unfitness by clear-and-convincing evidence. Minn. Stat. § 260C.317, subd. 1 (2010); Minn. R. Juv. Prot. P. 39.04, subd. 2(a). But a rebuttable presumption of palpable unfitness arises when a parent's custodial rights to another child have been involuntarily terminated or involuntarily transferred to a relative. Minn. Stat. § 260C.301, subd. 1(b)(4) (stating the presumption); *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 412 (Minn. App. 2011) (stating that the presumption is rebuttable), *review denied* (Minn. July

28, 2011). In those circumstances, the parent bears the burden of producing evidence to rebut the presumption. *J.L.L.*, 801 N.W.2d at 412. While the presumption shifts the burden of production to the parent, it "'does not shift to [a parent] the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.'" *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011) (quoting Minn. R. Evid. 301), *review denied* (Minn. Jan. 6, 2012).

Here, it is undisputed that C.Y. admitted to to an involuntary transfer of custody to one of her other children. We have "rejected a blanket rule that an admission to an involuntary [termination-of-parental-rights] petition converts the petition into a voluntary petition." *In re Child of A.S.*, 698 N.W.2d 190, 195 (Minn. App. 2005) (citing *In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 712 (Minn. App. 2004)), *review denied* (Minn. Sept. 20, 2005). Rather, the record must be examined to determine whether it contains support for a conclusion that the transfer was in fact voluntary and for good cause. *Id.* "Without clear evidence that an agreement relinquishing parental rights is voluntary and for good cause and is not merely an admission of ground for an involuntary placement, the presumption of palpable unfitness may not be avoided." *Id.* at 196. There is not clear evidence that the transfer of C.Y.'s custodial rights to one of her other children was voluntary and for good cause, and the statutory presumption of palpable unfitness therefore applies.

C.Y. argues that the district court erred by concluding that she did not rebut the presumption that she is palpably unfit to parent. As proof of her alleged rebuttal, she points to evidence in the record that she has "continued and documented sobriety since

the initiation of her CHIPS matter in 2011, her cooperation with Becker County Human Services[,] and substantiated compliance with her current Court Ordered Case Plan," along with other "positive steps," such as enrolling in college. But this argument is contrary to Minnesota caselaw and is therefore unavailing.

In *W.L.P.*, this court affirmed a district court's conclusion that a mother failed to rebut the presumption of palpable unfitness by presenting evidence that she attended chemical-dependency treatment after giving birth to her child, had no positive UA's, visited her child at every opportunity, displayed no concerning behavior during supervised visits, took medication for her bipolar disorder, obtained a parenting assessment, and became employed. 678 N.W.2d at 709. While noting that the mother there had made progress, we concluded that the record supported the district court's finding that the evidence introduced at the hearing was insufficient to rebut the presumption, especially given the mother's 30-year history of substance abuse, including using methamphetamine while pregnant with the child. *Id.* at 710.

Here, the district court found that C.Y. had been involved in chemical-dependency treatment 17 times dating back to 1996. While C.Y. successfully completed some treatments, other treatment attempts were unsuccessful because C.Y. used drugs and alcohol while in treatment or simply did not enroll in the recommended treatment programs. C.Y. also admitted to using methamphetamine and alcohol during and after her pregnancy with the child at issue here. While noting that C.Y. has made positive steps toward improving her circumstances, the district court found that "she still has a long way to go." Having "consistently and repeatedly shown her inability to remain drug

free for a prolonged period of time outside of a treatment facility." The district court found that, even after successfully completing some treatment programs, C.Y. "consistently returned to the use of alcohol," and "ultimately moves on to other illegal substances, such as cocaine or methamphetamine."

On this record, the district court's finding that C.Y. failed to rebut the presumption of palpable unfitness is not clearly erroneous. Because we conclude that the presumption applies and that the district court's finding is not clearly erroneous, we decline to address C.Y.'s argument that the record does not otherwise show her to be a palpably unfit parent.

II. Termination of C.Y.'s parental rights is in the best interests of the child.

In a termination-of-parental-rights proceeding, the best interests of the child are paramount. Minn. Stat. § 260C.301, subd. 7 (2010). The district court must consider the child's best interests and address those interests in its findings of fact and conclusions of law. *In re Tanghe*, 672 N.W.2d 623, 626 (Minn. App. 2003). The court must balance the child's interests in preserving the parent-child relationship, the parent's interest in preserving the relationship, and any competing interests of the child. Minn. R. Juv. Prot. P. 39.05, subd. 3(b)(3); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *R.T.B.*, 492 N.W.2d at 4.

Here, the district court concluded that it was in the child's best interests that C.Y.'s parental rights be terminated. The district court found that the child is at a young

age "where stability, permanency, safety and consistency are essential to [the child's] well-being and emotional development" and that C.Y. was not able to provide for the child's needs. The district court concluded that "the child's specific competing interests of stability, safety[,] and permanency far outweigh the interests in preserving the parent-child relationship."

It appears that the district court's conclusion is based on C.Y.'s extensive and prolonged history of drug and alcohol addiction, as well as the guardian ad litem's testimony that termination of C.Y.'s parental rights was in the child's best interests and that it would take years of documented sobriety before the guardian ad litem would feel that the child would be safe in C.Y.'s custody. C.Y.'s arguments in opposition to the district court's best-interests conclusion are essentially a rephrasing of her arguments regarding the presumption and are unavailing. On this record, the district court did not abuse its discretion by concluding that termination of C.Y.'s parental rights was in the child's best interests. *See W.L.P.*, 678 N.W.2d at 711 (conducting similar analysis).

Affirmed.