STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1178
A12-1180

In the Matter of the Welfare of the Child of:
M. R. M. and A. O. H., Parents (A12-1178)

and

In the Matter of the Welfare of the Children of:
M. R. M. and D. A. D., Sr., Parents (A12-1180).

Filed January 14, 2013
Affirmed
Halbrooks, Judge

Olmsted County District Court
File Nos. 55-JV-11-2284, 55-JV-11-9122

Frederick S. Suhler, Jr., Rochester, Minnesota (for appellant M.R.M.)

Mark A. Ostrem, Olmsted County Attorney, Geoffrey A. Hjerleid, Senior Assistant County Attorney, Rochester, Minnesota (for respondent Olmsted County Community Services)

Andrea Springer, Elgin, Minnesota (guardian ad litem)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Collins, Judge.*

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

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

HALBROOKS, Judge

Appellant M.R.M. challenges the district court's termination of her parental rights, arguing that the district court erred by concluding that (1) she is palpably unfit as a parent; (2) she failed to satisfy the duties of the parent-child relationship; (3) respondent Olmsted County Community Services (social services) made reasonable efforts to "correct the conditions leading to the children's [out-of-home] placement"; (4) the children were neglected; and (5) the children's best interests are served by termination of appellant's rights. We affirm.

FACTS

Between 1992 and 1998, appellant gave birth to three children while residing in Chicago. Appellant's parental rights to two of those children were involuntarily terminated in Illinois in 2001 and 2002, respectively. Appellant gave birth to three additional children in 2000, 2004, and 2010, respectively. In late 2002, she moved with the first of those children, D.C.D., from Chicago to Rochester, Minnesota, where they resided at a women's shelter for approximately two months.

Appellant's history with social services began during appellant's time at the shelter. In December 2002, social services received a report that D.C.D., then two years of age, was seen in the emergency room for a broken tibia and dehydration. A witness also reported that, earlier that day at the shelter, appellant yelled at D.C.D. and stated, "I can't wait to leave here, so I can whoop him." Social services began providing assistance

to appellant several months later, in May 2003, after she assaulted D.C.D.'s father within D.C.D.'s presence.

In April 2004, appellant gave birth to M.B.A.D. In October 2004, D.C.D., then age four, was sexually abused by appellant's nephew. In response to reports of that abuse, social services recommended that appellant take D.C.D. to a doctor, but she refused to do so. In January 2005, social services received a report that D.C.D. had again been sexually abused by a relative and that D.C.D.'s father beat D.C.D. for having let the incident occur.

From January 2005 through the fall of 2007, social services received four reports of domestic violence between appellant and the children's father, D.A.D. Two of those incidents resulted in injury to M.B.A.D., then an infant. During the same period, social services received four reports concerning appellant's educational neglect of D.C.D. Appellant explained to social services that she struggled to get D.C.D. to school because she overslept, did not have transportation, and was without clean clothes for D.C.D. Social services assisted appellant by providing wake-up calls, transportation, laundry vouchers, clothing vouchers, and detergent. Social services and personnel from D.C.D.'s school made recommendations to appellant to help her address the educational neglect of her child. Appellant refused to follow those recommendations.

In February 2005, social services received a report of appellant's "medical maltreatment" of D.C.D for failing to attend to his asthma, a condition of which appellant was aware D.C.D. suffered. Appellant explained to social services that she would take D.C.D. to the emergency room when his asthma became a problem. To ensure that

appellant obtain proper treatment for D.C.D, social services scheduled medical appointments, arranged transportation to those appointments, and coordinated with a public-health nurse. Despite this assistance, appellant failed to take D.C.D. to any of the scheduled visits and did not follow through with medical treatment for the child's asthma.

Social services offered additional support intended to help appellant address the family's ongoing challenges with respect to domestic violence, supervision of the children, discipline, and sexual abuse. Social services also referred appellant to Head Start and other programs providing parenting education, domestic-violence support, dental services, housing assistance, mental-health services, food resources, childcare assistance, and financial assistance. Despite the provision of these myriad services, appellant failed to attend appointments and evaluations to address her mental-health conditions and never attended a parenting program, despite having been provided transportation to and from the program.

From the fall of 2007 to March 2009, social services continued to assist appellant by providing transportation to appointments, case-planning conferences, rental assistance, rental deposits, assistance in job searches, bus passes, summer-camp enrollment for her children, and other services. In March 2009, social services concluded that appellant engaged in chronic neglect of her children. Social services was particularly concerned about the following issues: (1) the ongoing educational neglect of D.C.D; (2) appellant's inability to meet the basic needs of her children; (3) appellant's inability to provide safe, stable, and consistent housing; (4) appellant's practice of leaving the children with unsafe persons and the children's exposure to unsafe persons who frequented the family

residence; (5) M.B.A.D.'s report that she and her brother had been sexually touched by a family friend; (6) appellant's refusal to assist D.C.D. with his mental health and his sexual-abuse victimization; and (7) the medical neglect of M.B.A.D. for failing to ensure that she wore eyeglasses that are necessary to avoid invasive, corrective eye surgery.

In January 2010, appellant gave birth to T.J.H. That year, social services received another report that appellant was neglecting D.C.D.'s educational needs. And, in 2011, social services received a report every month prior to appellant's arrest concerning the educational neglect of both D.C.D. and M.B.A.D. The children's school reported that both D.C.D. and M.B.A.D. came to school tired and hungry and often fell asleep in class. The school also reported that D.C.D. struggled with his mental health. During this time, appellant failed to consistently provide for the basic needs of her three children and, again, refused to follow through with recommended services for her children. Appellant also lost the rental assistance that she had been receiving through the Salvation Army because she failed to comply with the organization's requirement that she seek employment.

In March 2011, appellant stabbed her nephew in the chest with a knife while her children were present. Appellant was arrested and charged with second-degree assault, which later resulted in conviction. Following her arrest, appellant placed her children with her sister, whose parental rights to her children had been terminated. Social services immediately sought emergency protective care of the children. The district court granted social services temporary custody on the grounds that appellant was unable to provide safe housing for her children while she was incarcerated.

Appellant was released from custody in May 2011 and was placed on probation. Before her release, social services initiated a child-in-need-of-protection or services (CHIPS) petition. During the CHIPS trial, appellant admitted that she was unable to provide the care required to ensure the safety and well-being of her children. The CHIPS court concluded that the children were in need of protection or services because they were without food, shelter, clothing, education, and other care that they required. The CHIPS court ordered that the children remain in the custody of social services.

In August 2011, the district court approved two out-of-home placement plans that social services developed jointly with appellant after her children were placed in foster care, and ordered appellant to comply with them. The plans were used in an effort to reunite appellant with her children and required that appellant manage her chemical dependencies, maintain sobriety, complete and pass random urinary analyses, bar unsafe people from the family home, maintain stable housing, manage her mental health, obtain medical treatment for her children, ensure that D.C.D. attends school every day and on time, and fulfill other measures. During the implementation of the plans, the children remained in foster care.

A month later, the district court reviewed appellant's compliance with the court-ordered plans and determined that, despite the reasonable efforts of social services, appellant failed to comply with the terms of the plans. For one, appellant continually tested positive for alcohol during urinary screenings. Appellant was also without housing or employment, which created a barrier to fulfilling the requirements for reunification with her children. During this time, appellant was required to attend a women's

domestic-violence program as a part of her probation for her assault conviction. But her attendance at the program was sporadic.

In October 2011, social services filed a petition for the termination of parental rights of appellant and D.A.D. as to their two children, D.C.D. and M.B.A.D. Social services later amended that petition and filed a separate petition for the termination of parental rights of appellant and A.O.H. as to their child, T.J.H. Each petition alleged four statutory grounds for termination.

In December 2011 and January 2012, D.C.D. made two suicide attempts. Around the same time, appellant moved into an apartment and began associating with a man, Y.A., a convicted sex offender. She requested of social services that Y.A. be allowed to accompany her on her visits with the children.

In March 2012, the district court held a trial on the petitions for the termination of appellant's parental rights. Social workers who had assisted appellant and her family testified as to appellant's need for services. The children's guardian ad litem supported the termination of parental rights on the ground that appellant engaged in chronic neglect of her children and failed to provide for the basic needs of the children. Barbara Carlson, a licensed clinical counselor who conducted a psychological and parenting evaluation of appellant, concluded that appellant's children were exposed to domestic violence, dangerous individuals at the family residence, a lack of educational participation, lack of medical care, sexual abuse, and chemical use by appellant. Based on these concerns, and in light of the extensive services provided to appellant, Carlson opined that appellant chronically neglected her children.

The district court terminated the parental rights of appellant and the children's fathers. The district court determined that clear and convincing evidence established four statutory grounds for termination: (1) failure to comply with parental duties; (2) palpable unfitness; (3) failure of reasonable social services' efforts to correct the conditions that led to out-of-home placement of the children; and (4) children who are neglected and in foster care. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4), (5), (8) (2012) (providing grounds for termination). The district court also concluded that termination of appellant's parental rights is in the children's best interests. This appeal follows.

D E C I S I O N

We will affirm the district court's decision to terminate parental rights if at least one statutory ground for termination is proved by clear and convincing evidence and if termination is in the children's best interests. *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 661 (Minn. 2008). While we give considerable deference to the district court's decision to terminate parental rights, we "closely inquire into the sufficiency of the evidence to determine whether it was clear and convincing." *In re Welfare of Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

A district court may terminate parental rights 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." Minn. Stat. § 260C.301, subd. 1(b)(4). Typically, the petitioning party bears the burden of proving palpable unfitness by clear and convincing evidence. Minn. Stat. § 260C.317, subd. 1 (2012); Minn. R. Juv. Prot. P. 39.04, subd. 2(a). But a

presumption of palpable unfitness arises when a parent's rights to another child have already been involuntarily terminated. Minn. Stat. § 260C.301, subd. 1(b)(4). In those circumstances, the parent bears the burden of producing evidence to rebut the presumption. *In re Welfare of Child of J.L.L.*, 801 N.W.2d 405, 412 (Minn. App. 2011), *review denied* (Minn. July 28, 2011). To overcome the presumption of unfitness, "a parent must introduce sufficient evidence that would allow a factfinder to find parental *fitness.*" *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 554 (Minn. App. 2007). Specifically, the parent must "affirmatively and actively demonstrate her or his ability to successfully parent a child." *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 251 (Minn. App. 2003).

Here, it is undisputed that appellant's parental rights to at least two children were involuntarily terminated in Illinois and, as a consequence, that she is presumed palpably unfit as a parent. Appellant argues that the district court erred by concluding that she did not rebut this presumption at trial. In support of her position, appellant contends that from 2000 to 2011 she "provided the necessities of life" to her children and "assumed th[e] responsibilities implicit in the parent-child relationship." She also argues that she has proven "a number of years of successful parenting."

Appellant's arguments are unsupported by the record. The evidence presented to the district court, which we closely review, reveals an ongoing pattern of parental neglect from 2003 (when social services began providing services to appellant) through 2011. The district court found, and the record reflects, that during this eight-year period appellant failed to consistently and adequately provide her children with the necessities of

nutrition, a stable and safe living environment, educational support, and medical treatment.

Throughout this period, the children were exposed to domestic violence and witnessed appellant stab their cousin. Unsafe persons frequented the family home. Two of appellant's children were sexually abused by friends of the family—D.C.D. was sexually abused at least twice. Compounding the negative impact of D.C.D.'s victimization, appellant repeatedly refused to follow through with appointments and other recommended services to address D.C.D.'s history as a victim of sexual abuse and his subsequent mental-health struggles.

Other medical needs of the children went unaddressed as well. Appellant never obtained proper medical treatment for D.C.D.'s asthma, even after social services scheduled the necessary appointments and arranged for transportation. And the record shows that appellant failed to ensure that M.B.A.D. wore medically necessary eyeglasses.

Appellant also neglected the educational needs of her children. She acknowledged that D.C.D. did not attend school regularly. This educational neglect continued despite the provision of supportive services. And when D.C.D. and M.B.A.D. did attend school, they went there tired and hungry.

In addition, the record reveals a pattern of appellant's refusal to utilize services aimed at helping her fulfill her parental duties. The district court found, following her release from prison, that appellant failed to satisfy the requirements of the court-ordered out-of-home placement plans—requirements which, if fulfilled, would have reunited appellant with her children.

In support of her contention that the district court erred, appellant asserts that the record lacks evidence that appellant is "so inept at parenting" that she could be assumed to be inept in the future. This argument overlooks the effect of the rebuttable presumption of palpable unfitness. Beyond proving that appellant's parental rights were previously terminated, social services was not required to make any additional showing of her parental unfitness. Appellant was presumed, as a matter of law, to be unfit. As such, the burden shifted to her to produce evidence of parental fitness. *See T.D.*, 731 N.W.2d at 554 ("[A] parent must introduce [to rebut the presumption of palpable unfitness] sufficient evidence that would allow a factfinder to find parental *fitness*."). Appellant did not produce any such evidence at trial.

In sum, appellant did not "affirmatively and actively" demonstrate to the district court her ability to successfully parent. *See D.L.R.D.*, 656 N.W.2d at 251 (explaining the showing of parental fitness required to rebut the presumption of palpable unfitness). Because the record clearly and convincingly supports the district court's determination that appellant failed to overcome the presumption of lack of parental fitness, we defer to the district court's termination decision under subdivision 1(b)(4). Because we must uphold the district court's termination decision so long as one statutory ground for termination is proved by clear and convincing evidence, we do not review the district court's conclusions with respect to any other grounds for termination. By doing so, we do not imply that other statutory grounds are not supported by clear and convincing evidence.

Having determined that a statutory ground for termination exists, we review the district court's decision that termination is in the best interests of appellant's children. *See In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) ("[A] child's best interests may preclude terminating parental rights." (quotation omitted)). In analyzing the children's best interests, the district court was required to balance three factors: (1) the children's interest in preserving a parent-child relationship, (2) appellant's interest in preserving that relationship, and (3) any competing interest of the children. *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." *Id.* "Where the interests of parent and child conflict, the interests of the child are paramount." Minn. Stat. § 260C.301, subd. 7 (2012).

Here, the district court balanced the competing interests of appellant and the children. It determined: "While [appellant] has an interest in preserving her relationship with the children, given that she is palpably unfit to be a party to the parent-child relationship, the children do not have a significant interest in preserving the same." The district court concluded that the children's needs for safety, stability, and permanency outweigh appellant's interest. Appellant argues that this determination is erroneous because there is "no evidence" that the children fear appellant or are unwilling to participate in visits with her and because the two older children are aware that appellant is their mother.

In reviewing the district court's weighing of the competing interests of appellant and her children, we are ever mindful that appellant's desire to care for her children does

not outweigh those children's needs for consistent care, including a safe and stable living environment, medical attention, educational and emotional support, and nutrition. That the children know appellant and do not fear her, or that they freely participated in the visits arranged by social services, does nothing to minimize their needs that have been neglected for years under appellant's care.

The record, in light of the clear and convincing standard of proof, supports the district court's determination that termination of appellant's parental rights is in the children's best interests. There is clear and convincing evidence in the record that the children's need for educational, emotional, and medical support in addition to a safe and stable home, which appellant cannot foreseeably provide, outweighs appellant's interest in maintaining the parent-child relationship. The district court did not err.

Affirmed.