STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1788

In the Matter of the Welfare of the Child of: S. M., Parent.

Filed March 18, 2013
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. 62-JV-12-1696

Patricia J. Stotzheim, Stotzheim Law Office & Mediation, LLC, St. Paul, Minnesota (for appellant S.M.)

John J. Choi, Ramsey County Attorney, George R. Joyer, Special Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County Community Human Services Department)

John Jerabek, Niemi, Barr & Jerabek, P.A., Minneapolis, Minnesota (for guardian ad litem)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

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

KALITOWSKI, Judge

Appellant S.M. challenges the district court's order terminating her parental rights to J.N.N. Appellant argues that the evidence does not support any statutory ground for termination and that termination of her parental rights is not in J.N.N.'s best interests. We affirm.

D E C I S I O N

We review a termination of parental rights to determine whether the district court's findings address the statutory criteria, are supported by substantial evidence, and are not clearly erroneous. *In re Welfare of the Children of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008). When at least one statutory ground for termination is supported by clear and convincing evidence and termination is in the best interests of the child, we affirm the district court's termination of parental rights. *Id.* We review the district court's determination that the statutory requirements for termination have been established by clear and convincing evidence for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900-01, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

I.

The district court may terminate all rights of a parent to a child when it finds

> 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) (2012). A parent is presumed palpably unfit upon a showing that the parent's rights to one or more other children were involuntarily terminated. *Id.* Application of this presumption shifts the burden of proof to the parent to rebut the presumption of palpable unfitness. *In re Welfare of T.D.*, 731 N.W.2d 548,

554 (Minn. App. 2007). The parent successfully rebuts the presumption by introducing sufficient evidence to show her parental fitness. *Id.*; *In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 251 (Minn. App. 2003) ("[A] parent must affirmatively and actively demonstrate her or his ability to successfully parent a child," which is "a particularly onerous task.").

It is undisputed that appellant's parental rights to several of her other children were involuntarily terminated. Thus, the district court properly applied the statutory presumption, and it was appellant's burden to prove her parental fitness.

Following an incident in March, respondent Ramsey County filed an expedited termination petition on May 16, 2012. In March, appellant's brother, who was in Illinois, contacted the police to request a welfare check at appellant's home because appellant had made threats against herself and J.N.N. in a phone conversation. When the police arrived, appellant was visibly agitated and displayed signs of mental instability. In addition, appellant and two other adults in the apartment were intoxicated. J.N.N. was on a couch and appeared to have been sleeping. The police took appellant to the hospital for a mental-health evaluation. At the hospital, appellant had an alcohol concentration of .28 and tested positive for cocaine. J.N.N. was taken to Children's Hospital for an evaluation and then placed in a shelter.

Appellant argues that she presented sufficient evidence to prove her parental fitness because she (1) successfully parented J.N.N. for the first five years of J.N.N.'s life without law enforcement or child-protection intervention; (2) is participating in treatment

and has support from friends to maintain her sobriety; and (3) sees a psychologist every two weeks to address her mental-health issues.

But showing some improvement is insufficient to show parental fitness. *T.D.*, 731 N.W.2d at 554-55. Thus, although appellant's attendance at outpatient treatment and clean urinalyses since the incident that initiated this termination proceeding are positive developments, these circumstances are not alone sufficient to overcome the presumption that appellant is palpably unfit.

Moreover, the district court made findings that appellant has not established her parental fitness. Specifically, appellant (1) delayed treatment for four months after J.N.N. was taken from her home; (2) failed to comply with the recommendation that she undergo inpatient care; (3) did not submit any supporting documents related to her alleged psychological treatment; and (4) did not identify individuals in close proximity to her who were familiar with her substance abuse history and who could provide support for her continued sobriety. We conclude that in light of the presumption of parental unfitness and the burden on appellant to prove her fitness, the district court's finding that appellant is palpably unfit is not clearly erroneous. Therefore, the district court did not abuse its discretion by invoking this statutory basis to terminate appellant's parental rights.

The district court also found that two other statutory grounds for termination existed: (1) that appellant substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon her by the parent and child relationship and (2) that J.N.N. was neglected and in foster care. But because we conclude that the district

court did not err in finding appellant palpably unfit, and because only one statutory ground is required for termination, we need not address these alternative grounds.

II.

In proceedings to terminate parental rights, the best interests of the child are the paramount consideration. Minn. Stat. § 260C.301, subd. 7 (2012); *J.R.B.*, 805 N.W.2d at 901-02. We review the district court's ultimate determination that termination is in a child's best interest for an abuse of discretion. *J.R.B.*, 805 N.W.2d at 905.

"In analyzing the best interests of the child, the court must balance three factors: (1) the child's interest in preserving the parent-child relationship; (2) the parent's interest in preserving the parent-child relationship; and (3) any competing interest of the child." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). Competing interests of the child include "a stable environment, health considerations[,] and the child's preferences." *Id.* The interests of the parent and the child need not be given equal weight. *Id.* The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *In re Child of Evenson*, 729 N.W.2d 632, 635 (Minn. App. 2007) (quotations omitted), *review denied* (Minn. June 19, 2007).

Appellant argues that the district court's analysis of the best-interest factors was incomplete and did not identify any specific conduct or current conditions to support its conclusion. We disagree.

In a detailed, well-reasoned order, the district court analyzed and weighed the best-interest factors:

> Undoubtedly, [J.N.N.] has an interest in preserving the parent-child relationship with her mother and [appellant] has an interest in preserving the parent-child relationship with [J.N.N.]. . . . If there was a safe alternative [to terminating appellant's parental rights], this court would choose it, but there is little evidence that weighs in favor of delaying permanency for this child. There is no evidence that [appellant's] issues can be addressed and resolved in the reasonably foreseeable future. . . . [J.N.N.'s] health, safety and welfare would be at risk if she were returned to her mother's care. . . . It is not this court's intention to suggest that appellant has done nothing right or that she has not genuinely loved her daughter. She has great desire to maintain a parent-child relationship with [J.N.N.]. The issues [appellant] must address and conquer, however, are of long duration and not yet grasped or internalized by her in a manner that demonstrates her ability to succeed with therapeutic support within the foreseeable future.

Thus, the district court weighed appellant's and J.N.N.'s interests and concluded that J.N.N.'s competing interests of living in a safe, stable home and ensuring J.N.N.'s health, safety, and welfare outweighed any interest either appellant or J.N.N. had in maintaining the parent-child relationship. We conclude that the district court did not abuse its discretion in determining that it was in J.N.N.'s best interests to terminate appellant's parental rights.

Affirmed.