STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0217

In the Matter of the Welfare of the Child of:
J. G.-A. and Unknown Father, Parents.

Filed June 19, 2017
Affirmed
Jesson, Judge

Benton County District Court
File No. 05-JV-16-979

Philip Miller, Benton County Attorney, William V. Faerber, Assistant County Attorney, Foley, Minnesota (for respondent Benton County Human Services)

Cathleen Gabriel, Annandale, Minnesota (for appellant mother)

Tylor Cummings, Waite Park, Minnesota (guardian ad litem)

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

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

JESSON, Judge

Appellant J.G.-A. challenges the district court's order terminating her parental rights to her youngest child after previous involuntary terminations and an involuntary transfer of custody with respect to other children. Because clear and convincing evidence supports the district court's determination that she is palpably unfit to parent the child, and because

the district court did not abuse its discretion by determining that termination of parental rights is in the child's best interests, we affirm.

FACTS

J.G.-A. (mother) gave birth to C.W.C., the child who is the subject of the proceedings, in St. Cloud in 2016. In 2014 and 2015, mother's rights to three previous children had been involuntarily terminated, and there was an involuntary transfer of custody with respect to another child. In November 2015, Benton County Human Services (the county) learned that mother was incarcerated in the Benton County jail and was expecting another child. Because the county was aware that mother had chemical-dependency issues, a social worker met with her to discuss those issues. At that time, mother agreed to undergo a chemical-dependency evaluation and drug testing as soon as she was released from jail. The county contacted her further in February 2016, when she was again incarcerated; she then informed the social worker that she had not yet obtained prenatal care or received the chemical-dependency evaluation to which she had previously agreed. In April 2016, a county social worker again spoke with mother to discuss what would happen when the child was born and how she could show that she was fit to raise the child. Mother was again advised to complete a chemical-dependency evaluation and to comply with any probationary requirements of her criminal sentences. Although an assessor attempted several times to contact her by phone to schedule an evaluation, at least three phone messages went unanswered.

When the child was born, the hospital notified the county, and the district court ordered the child placed in emergency protective care in the custody of the county, with

placement in foster care.[1] The district court also ordered mother to submit to random drug testing. On June 20, she completed a hair follicle test, which showed the presence of a level of methamphetamine 15 times higher than the threshold used by the testing company as well as amphetamine. A urine test at the same time was positive for those substances. On June 28, mother completed a rule 25 chemical-dependency evaluation, which recommended that she enter residential treatment, abstain from chemical use, attend AA or similar support meetings, submit to random drug testing, follow discharge recommendations and conditions of probation, and remain law abiding.

On June 6, five days after the child's birth, the county filed an initial petition to terminate mother's parental rights to the child. When that petition was heard in July, mother had pending criminal cases in three counties. The district court denied the petition due to an incorrect citation in the petition that implicated due-process concerns, but adjudicated the child in need of protection or services.

On August 19, the county filed an out-of-home placement plan, which required mother to comply with drug testing and follow through with recommended services. Five days later, she was committed to prison for 48 months after violating probation on a conviction of second-degree controlled-substance crime. While incarcerated, she completed a day-treatment mental-health program and attended a support group for new mothers, but she did not participate in a chemical-dependency program.

[1] There has been no adjudication of paternity regarding the child's father.

The county filed another petition to terminate mother's parental rights in October 2016, alleging that she had substantially, repeatedly, or continuously refused to comply with the duties of the parent-child relationship and that she was palpably unfit to parent the child, based on the prior involuntary terminations as to other children. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4) (2016). The district court held a trial in January 2017.

At trial, mother's social worker testified that after the June 28 chemical-dependency evaluation, mother did not take any additional steps to address her chemical issues and did not submit to further drug testing. The social worker testified that mother had applied for a prison boot-camp program, but she would be ineligible for 60 days based on disciplinary infractions while incarcerated and is not guaranteed a spot in that program.

The child's guardian ad litem testified that the child has had no interaction with mother since birth, due to the prior terminations of her parental rights to other children. The child is currently placed with his half-sibling and has developed an attachment to his caretakers. The guardian ad litem testified that it was in the child's best interests that mother's parental rights be terminated.

Mother testified that when she was pregnant, she used methamphetamine, but that she did perform a rule 25 evaluation near the end of her pregnancy and received prenatal care. She stated that she had been fired from one prison job for a minor infraction and had a new prison job. She stated that she was not allowed to participate in a lot of prison programming, but that she had been applying anyhow because "if you're not in programming, basically, you're in your room." She was optimistic about getting into the boot-camp program within a few months, but acknowledged there was no guarantee. She

stated that she was trying to address her mental health, that she was on a waiting list for chemical-dependency treatment, and that she had "messed up in the beginning," but was trying hard to show her fitness as a parent.

The district court filed findings of fact, conclusions of law, and an order terminating mother's parental rights to C.W.C. on two grounds: repeated refusal or neglect to comply with the duties of the parent-child relationship and palpable unfitness to parent the child. *See* Minn. Stat. § 260C.301, subd. 1(b)(2), (4). A presumption of palpable unfitness applied based on the previous involuntary terminations and change of custody, and she had failed to rebut that presumption. The district court found that, although the county was not required to provide reasonable efforts to reunite the child with mother, based on the previous terminations and custody change, the county had engaged in reasonable efforts. It found, however, that mother was essentially homeless, without transportation, and suffering from mental illness and chemical addition, and that her failure to address these issues as directed by social services made her palpably unfit to parent now and in the foreseeable future. The district court further determined that the child's best interests supported termination of parental rights. Mother appeals.

D E C I S I O N

A parent's rights to a child may be terminated "only for grave and weighty reasons." *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012) (quotation omitted). But a district court may terminate parental rights when at least one statutory ground for termination is supported by clear and convincing evidence and the court determines that termination is in the child's best interest. *In re Welfare of Child of R.D.L.*, 853 N.W.2d

127, 137 (Minn. 2014). We review the district court's findings for clear error, *In re Welfare of Children of T.R.*, 750 N.W.2d 656, 660 (Minn. 2008), and its decision to terminate parental rights for an abuse of discretion. *J.K.T.*, 814 N.W.2d at 93.

I. Clear and convincing evidence supports the district court's termination of parental rights on the ground of palpable unfitness.

Although a parent is generally presumed to be a suitable person to be entrusted with his or her child's care, *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995), if the parent's rights to another child have been involuntarily terminated, a presumption arises that the parent is palpably unfit to be a party to the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4). Termination of parental rights on the ground of palpable unfitness requires "a consistent pattern of specific conduct before the child," or "specific conditions directly relating to the parent-child relationship," which render the parent unable to care appropriately for the child's needs "for the reasonably foreseeable future." *Id.* If the presumption of palpable unfitness applies, the parent then has the burden to introduce evidence that would justify a finding that he or she is not palpably unfit. *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). To sustain this burden, the parent must produce evidence showing that he or she "is suitable to be entrusted with the care of the child." *R.D.L.*, 853 N.W.2d at 137 (quotation omitted). We review de novo the district court's determination of whether a parent's evidence would justify a finding that the parent is not palpably unfit. *J.W.*, 807 N.W.2d at 446. And we examine the district court's underlying decision to terminate

parental rights to ensure that it is supported by clear and convincing evidence. *See R.D.L.*, 853 N.W.2d at 136.

Here, the district court found that clear and convincing evidence supported the termination of mother's parental rights on the ground that she was palpably unfit to parent the child. Because mother's parental rights to three other children were involuntarily terminated, and custody of another child was involuntarily transferred, the presumption of palpable unfitness applies. *See* Minn. Stat. § 260C.301, subd. 1(b)(4). The district court determined that mother failed to rebut that presumption, finding that her chemical-dependency and mental-health issues created an unstable lifestyle for herself and the child. The district court found that, since the child's birth, mother had not been employed or had a stable residence and had been convicted of several felony offenses, which resulted in her incarceration. The district court further found that she had failed to avail herself of opportunities for drug testing and that she did not complete a chemical-dependency evaluation until well after the child's birth. The district court determined, based on its findings, that her failure to effectively and promptly address those issues rendered her a palpably unfit parent for the foreseeable future.

The parties do not dispute that the presumption of palpable unfitness applies in this case. But mother argues that she produced evidence sufficient to rebut the presumption. She maintains that the district court disregarded evidence that she had completed a rule 25 evaluation and was transported to the doctor for prenatal care while she was incarcerated. She also argues that the district court improperly referenced mental-health issues when county did not present evidence as to those issues. But in order to rebut the presumption

of palpable unfitness, mother was required to produce evidence sufficient to support a finding that she was suitable to be entrusted with the child's care. *R.D.L.*, 853 N.W.2d at 136. Yet here, the record shows that mother rejected county assistance with her chemical-dependency issues during her pregnancy. Shortly after the child was born, she tested positive for a very high level of methamphetamine and amphetamine. Although she eventually completed a rule 25 evaluation, she failed either to follow recommendations for residential treatment or to submit to additional drug testing. And although mother is correct that the county did not present evidence of her mental illness, the district court's findings on her chronic drug use sufficiently support its determination that she failed to rebut the presumption of palpable unfitness.

Mother notes that, standing alone, chemical-dependency issues cannot justify a termination of parental rights absent a causal connection between substance use and the parent's ability to care for the child. *In re Welfare of Children of T.A.A.*, 702 N.W.2d 703, 710 (Minn. 2005). Stated another way, to provide a basis for termination on the ground of palpable unfitness, a parent's substance abuse must be "of a nature and duration that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the child's ongoing needs." *T.R.*, 750 N.W.2d at 663. Here, the district court appropriately considered mother's failure to follow recommendations to address untreated chemical-dependency issues as affecting her ability to parent. She testified that she attempted to address her parenting skills while in prison, attending a wellness program, a new parents' program, and a cognitive skills program. She also testified that she was on a waiting list for a prison chemical-dependency program. But evidence of her participation in

programming in a structured prison environment does not compel a determination that she rebutted the presumption that she was a palpably unfit parent. *See In re Welfare of Child of W.L.P.*, 678 N.W.2d 703, 710 (Minn. App. 2004) (rejecting assertion that after a 30-year history of substance abuse, a parent's ability to stay drug-free for a three-month period in a structured environment was sufficient to rebut presumption of unfitness). Further, the district court was entitled to place only limited weight on her future intentions because it was required to address her parenting capabilities at the time of the trial. *See J.W.*, 807 N.W.2d at 446 (stating that "[the] evidence was appropriately focused on . . . skills and behavioral tendencies at the time of the trial.").

Mother has longstanding, unaddressed chemical-dependency issues that have rendered her unable to maintain a safe and stable home for the child. While the presumption of parental unfitness is easily rebuttable, good intentions and prison programming do not clear this low bar. *See R.D.L.*, 853 N.W.2d at 137. The district court did not err by determining that mother failed to rebut the presumption of palpable unfitness and that clear and convincing evidence supported the termination of her parental rights on that ground. Because the record establishes palpable unfitness as a ground for termination under Minnesota Statutes § 260C.301, subdivision 1(b)(4), we need not review the other statutory ground on which the district court relied. *See T.A.A.*, 702 N.W.2d at 708 ("Only one ground must be proven for termination to be ordered.").

II. The child's best interests support termination of parental rights.

Mother also challenges the district court's conclusion that termination of her parental rights is in the child's best interests. The child's best interests are the paramount

consideration in a termination proceeding. Minn. Stat. §§ 260C.001, subd. 2(a) (2016), .301, subd. 7. Even if a statutory basis for termination has been proved, if termination is not in a child's best interests, termination of parental rights is not appropriate. *D.L.D.*, 771 N.W.2d at 545.

The district court must analyze the best interests of the child by balancing 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." *W.L.P.*, 678 N.W.2d at 711 (quotation omitted). Competing interests may include "a stable environment [and] health considerations." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). We review the district court's ultimate determination that termination is in a child's best interests for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

Here, the district court determined that the child's best interests and safety were served by the termination of mother's parental rights. The district court found that mother had a history of chronic drug use, was unable to adequately care for her child while using controlled substances, and had failed to provide the child with stable housing, transportation to medical care, or other necessities. It found that, by the time of mother's anticipated release from prison, the child would have been placed outside of her home for over two years. The district court therefore determined that the child's interest in a safe, stable, and drug-free environment outweighed mother's interest in preserving the parent-child relationship.

Mother argues that the district court improperly based its best-interests findings on her incarceration. Incarceration by itself does not necessarily render a person unable to parent a child. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 378-79 (Minn. 1990) (affirming district court's denial of termination for mother incarcerated for murdering a child, based on her continuing relationship with child and amenability to services while incarcerated). But incarceration does create challenges and necessarily decreases the incarcerated person's ability to provide for a child's needs. *In re Welfare of Children of A.I.*, 779 N.W.2d 886, 892 (Minn. App. 2010), *review dismissed* (Minn. Apr. 20, 2010).

Mother challenges the district court's finding that the child would have been in out-of-home placement for two years by the time of her release from prison, arguing that her possible acceptance into a boot-camp program would result in an earlier release. But the district court's concern for the child's stability is consistent with permanency deadlines. *See, e.g.*, Minn. Stat. § 260C.503 (2016) (providing that the district court must commence permanency proceedings no later than 12 months after a child is placed in foster care). And more importantly, mother's incarceration was not the sole reason for terminating her parental rights. The district court found that J.G.-A. has not shown that she is able to care for her child while she is using controlled substances and has failed to show any permanent or meaningful change in her lifestyle that would render her an adequate caretaker once she is released from prison. Given these findings, the district court determined that the child's best interests support termination of mother's parental rights. We agree.

Affirmed.