STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1482
A23-1486

In the Matter of the Welfare of the Child of:
D. M. P. and J. T. P., Parents.

Filed March 18, 2024
Affirmed
Connolly, Judge

Becker County District Court
File No. 03-JV-23-559

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Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In these consolidated appeals, appellant-mother and appellant-father challenge the district court's termination of their parental rights. We affirm.

FACTS

Appellant J.T.P. (father) has ten children, three of whom are adults; the parental rights to at least one of his children were involuntarily terminated in 2012. Father also has an extensive criminal history, which includes several convictions for assaultive behavior. Father has spent approximately 15 years, or "2/3 of his adult life," incarcerated, and he was incarcerated for assault during part of the case plan that ultimately led to the 2012 termination of his parental rights.

Appellant D.M.P. (mother) has six biological children. The parental rights to at least two of mother's children were involuntarily terminated in 2020. In that proceeding, there were allegations of domestic and sexual abuse by mother's then-boyfriend, including allegations that mother failed to protect her children from serious endangerment and neglect.

Father and mother[1] were married in December 2020. They are the biological parents of S.P., born on May 12, 2021, and the subject of these proceedings. S.P. was placed in foster care on June 7, 2021, and has resided outside of the home ever since. The only two children in appellants' care are twins, born to appellants in or around February 2022.[2]

In June 2021, respondent petitioned for an involuntary termination of parental rights (TPR) of appellants to S.P. under Minn. Stat. § 260C.301, subd. 1(b)(4) (2020). The petition alleged that appellants were palpably unfit to be parties to the parent-child

[1] Mother and father will, hereinafter, collectively be referred to as "appellants."
[2] Neither the district court, nor respondent Becker County Human Services, were aware that appellants had twins who were in their care at the time of these proceedings.

relationship because their parental rights had previously been terminated involuntarily. Following a trial, the district court granted the petition. This court subsequently reversed and remanded for further proceedings because the district court's analysis regarding the rebuttable presumption contained in section 260C.301, subdivision 1(b)(4), misapplied the applicable law. *In re Welfare of Child of D.M.P.*, No. A21-1617, 2022 WL 1765961, at *3 (Minn. App. May 31, 2022).

After remand from this court, the district court dismissed the first termination matter and reopened the child-in-need-of-protection-or-services (CHIPS) file to allow appellants to work a case plan toward reunification with S.P. In the meantime, in early 2022, appellants relocated to Milwaukee, Wisconsin. But on April 3, 2023, respondent filed another petition to terminate appellants' parental rights to S.P. The petition alleged that appellants' parental rights to S.P. should be terminated under (1) Minn. Stat. § 260C.301, subd. 1(b)(4) (2022), because appellants were palpably unfit to be parties to the parent-and-child relationship; and (2) Minn. Stat. § 260C.301, subd. 1(b)(5) (2022), because appellants have failed to correct the conditions leading to S.P.'s placement.

A four-day trial was held in August and September 2023, at which time both mother and father acknowledged that they do not trust government agencies, and that they refused to engage in aspects of their case plan. Similarly, witnesses for respondent testified that appellants refused to participate in many aspects of their case plan. And multiple witnesses for respondent testified that appellants were not only uncooperative, but were "[e]xtremely hostile, very intimidating, very intense and argumentative."

Following the trial, the district court found that respondent "cannot meet its burden of proof establishing that [appellants] are unfit as parents." But the district court determined that "grounds for termination have been proven by clear and convincing evidence" under Minn. Stat. § 260C.301, subd. 1(b)(5), because appellants have failed to correct the conditions leading to S.P.'s out-of-home placement. The district court also determined that it is in S.P.'s best interests to grant the termination petition. Appellants filed separate appeals, which were consolidated by order of this court.

DECISION

Appellants challenge the district court's decision to terminate their parental rights to S.P. Minnesota courts presume that "a natural parent is a fit and suitable person to be entrusted with the care of his or her child." *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995). Thus, parental rights may be terminated only for "grave and weighty reasons." *In re Welfare of M.D.O.*, 462 N.W.2d 370, 375 (Minn. 1990). But a district court may involuntarily terminate parental rights if: (1) the county made reasonable efforts toward reunification; (2) there is clear and convincing evidence that a statutory condition exists to support termination under Minnesota Statutes section 260C.301, subdivision 1(b); and (3) the proposed termination is in the child's best interests. *See* Minn. Stat. §§ 260C.301, subds. 1(b), 7-8, .317, subd. 1 (2022); *see also In re Welfare of Child of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008).

Whether to terminate parental rights is discretionary with the district court. *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 136 (Minn. 2014). This court reviews "the termination of parental rights to determine whether the district court's findings address the

statutory criteria and whether the district court's findings are supported by substantial evidence and are not clearly erroneous." *S.E.P.*, 744 N.W.2d at 385. In doing so, we review the district court's findings of the underlying or basic facts for clear error, and its determination of whether a particular statutory basis for involuntarily terminating parental rights is present for an abuse of discretion. *In re Welfare of Child of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). We defer to the district court's decision "because a district court is in a superior position to assess the credibility of witnesses." *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996). Thus, the reviewing court does not engage in fact-finding, reweigh the evidence, or "reconcile conflicting evidence." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotation omitted); *see In re Welfare of Child of J.H.*, 968 N.W.2d 593, 601 n.6 (Minn. App. 2021) (applying *Kenney* in a TPR appeal), *rev. denied* (Minn. Dec. 6, 2021). "Consequently, an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court." *Kenney*, 963 N.W.2d at 222 (quotation omitted). Rather, our "duty is fully performed" after we have "fairly considered all the evidence and . . . determined that the evidence reasonably supports the decision." *Id.* (quotations omitted).

When a person's parental rights to a child have previously been terminated involuntarily, courts must apply a presumption of palpable unfitness, and unless the parent rebuts this presumption, the county does not bear the ultimate burden to prove the elements of a termination petition. Minn. Stat. § 260C.301, subd. 1(b)(4) (stating that a parent is presumed to be palpably unfit "upon a showing that the parent's parental rights to one or

more other children were involuntarily terminated"). But the presumption imposed by the statute is "easily rebuttable" if the parent introduces evidence that could support a finding that the parent is able to care for the child. *In re Welfare of J.A.K.*, 907 N.W.2d 241, 245-46 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Feb. 26, 2018). If appellants' evidence sufficiently rebutted the presumption, respondent would have to prove by clear and convincing evidence that they are, in fact, palpably unfit or that another statutory basis for TPR exists. *Id.* at 247-48.

The district court here found that the "prior involuntary terminations and/or involuntary transfer of permanent physical and legal custody related to each of the parents . . . substantiate[d] the presumption of unfitness." But the district court found that appellants "have produced evidence to rebut that presumption, namely that they have been raising two children in their home for the past 17 months." Although the district court was careful to note that it "is not finding [that appellants are] fit parent[s]," the court found that respondent "cannot meet its burden of proof establishing that [appellants] are unfit as parents."

Relying on the district court's aforementioned findings, appellants argue that, "[w]ithout a finding of parental unfitness, termination was improper." Even ignoring appellants' substitution of "parental" for "palpable" in their description of the type of "unfitness" that can justify a TPR, we still conclude that appellants' argument is legally incorrect. Minnesota law provides that a district court may terminate all rights of a parent to a child upon a showing that one or more of nine conditions exist. *See* Minn. Stat. § 260C.301, subd. 1(b)(1)-(9). Of those nine conditions, only one requires a finding of

palpable unfitness. *Id.*, subd. 1(b)(4). For example, a parent could be fit as a parent, but if that parent is found to have abandoned the child, termination of parental rights may be appropriate. *See id.*, subd. 1(b)(1) (stating that termination of parental rights may be appropriate if the district court finds "that the parent has abandoned the child").

Here, the district court declined to find that appellants were palpably unfit parents. But it did not terminate appellants' parental rights based on palpable unfitness. Instead, the district court terminated appellants' parental rights under Minn. Stat. § 260C.301, subd. 1(b)(5), because appellants failed to correct the conditions leading to S.P.'s placement outside of the home. The briefs filed by both mother and father in this appeal ignore the district court's basis for the termination order. By not making any argument on appeal challenging the statutory basis for the district court's termination order, appellants have waived this challenge on appeal. *See McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (applying the rule that arguments not briefed are waived where the appellant "allude[d] to" issues but "fail[ed] to address them in the argument portion of his brief"); *see also State v. Iron Waffle Coffee Co.*, 990 N.W.2d 513, 520 n.3 (Minn. App. 2023) (stating that "issues not briefed on appeal are waived" (alteration omitted)). Moreover, appellants do not specifically challenge the district court's determination that it is in S.P.'s best interests to grant the termination petition. Accordingly, appellants have failed to show that the district court abused its discretion in terminating their parental rights to S.P.

Affirmed.