STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1820

In the Matter of the Welfare of the Child of:
R.D.L. and J.W., Parents.

Filed March 31, 2014
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-JV-12-10668

William Ward, Chief Hennepin County Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellants R.D.L. and J.W.)

Michael O. Freeman, Hennepin County Attorney, Cory A. Carlson, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Shirley Reider, St. Paul, Minnesota (for guardian ad litem)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Hooten, Judge.

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

BJORKMAN, Judge

Appellants mother and father challenge the termination of their parental rights, arguing (1) the presumption of unfitness in Minn. Stat. § 260C.301, subd. 1(b)(4) (2012), and the elimination of reasonable efforts in Minn. Stat. § 260C.001, subd. 3 (2012), are unconstitutional; (2) the district court abused its discretion by precluding father from

introducing certain evidence of his ability to parent; and (3) termination is not in the child's best interests. We affirm.

FACTS

In August and September 2012, appellants' parental rights to four minor children were involuntarily terminated. The termination was grounded in the children's prolonged exposure to domestic violence, prostitution, and drug abuse; appellants' failure to consistently provide housing or a stable environment; and appellants' inability to successfully complete their case plans.[1] This court affirmed the termination. *In re Welfare of Children of R.D.L.*, No. A12-1758, (Minn. App. Mar. 11, 2013), *review denied* (Minn. Apr. 16, 2013).

The child at issue in this appeal was born on May 30, 2012, during the prior termination proceeding. On August 30, 2012, the Hennepin County Human Services and Public Health Department (the county) filed a petition alleging the child was in need of protection or services. On November 14, the child was located and placed into foster care. The following day, the district court issued an order relieving the county of the obligation to make reasonable efforts to reunite the family. The county commenced this termination proceeding on December 3, alleging, among other things, that the statutory presumption of palpable unfitness to parent applies because of the prior termination. Mother moved the district court to determine that the statutory presumption of unfitness is unconstitutional; the court denied the motion. Only father presented evidence at trial.

[1] Only mother challenged the termination petition. Father's parental rights were terminated by default after he failed to appear for trial.

The district court found that father's evidence did not rebut the presumption of unfitness and that termination of appellants' parental rights serves the child's best interests. This appeal follows.

D E C I S I O N

I. The statute creating a presumption of palpable unfitness based on a prior involuntary termination of parental rights and the statute relieving a county of the obligation to reunite a family when the presumption applies are constitutional.

The constitutionality of a statute is a question of law, which we review de novo. *Irongate Enters., Inc. v. Cnty. of St. Louis*, 736 N.W.2d 326, 332 (Minn. 2007). We presume statutes are constitutional and will only declare a statute unconstitutional "when absolutely necessary." *ILHC of Eagan, LLC. v. Cnty. of Dakota*, 693 N.W.2d 412, 421 (Minn. 2005) (quotation omitted).

Appellants first argue that Minn. Stat. § 260C.301, subd. 1(b)(4), violates their constitutional rights to substantive due process and equal protection. The statute creates a presumption that "a parent is palpably unfit to be a party to the parent and child relationship" if the parent's rights to another child were involuntarily terminated. Minn. Stat. § 260C.301, subd. 1(b)(4). The presumption is rebuttable; it shifts to the parent a burden of production. *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). The presumption only becomes conclusive if the parent does not present sufficient evidence to rebut it. *See In re Welfare of D.L.R.D.*, 656 N.W.2d 247, 250-51 (Minn. App. 2003).

Appellants acknowledge that we have previously rejected their constitutional arguments, but assert that there are compelling reasons for us to depart from our precedent. *See State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005) (holding that an appellate court must have a "compelling reason" to overrule precedent). In *In re Child of P.T.*, we held that the presumption of palpable unfitness does not violate substantive due process because it is narrowly tailored to meet the state's interest in protecting children from parental abuse. 657 N.W.2d 577, 588-89 (Minn. App. 2003), *review denied* (Minn. Apr. 15, 2003). We explained:

> The statutory presumption of palpable unfitness applies only to parents who previously have had their parental rights involuntarily terminated. Unlike parents who voluntarily terminate their parental rights, parents who have had their parental rights involuntarily terminated have been adjudicated to pose a continuing threat to the safety of their children. Therefore, the presumption only reaches people who have already demonstrated the potential to abuse or neglect their children.

Id. at 588. And we also held that the statute does not violate equal-protection rights because "parents who voluntarily terminate their parental rights are not situated similarly to those who have their rights terminated involuntarily." *Id.* at 589 ("While in both cases parental rights have been terminated, a parent who has had his or her parental rights involuntarily terminated has been adjudicated as failing to adequately provide for the child's health and safety; while a parent who has voluntarily terminated his or her parental rights has not been so adjudicated.").

Appellants urge us to overrule *P.T.*, arguing that the statute is not narrowly tailored because it is underinclusive in that parents who voluntarily terminate their

parental rights avoid the presumption but may continue to pose a threat to other children. Father also argues that the statute is not narrowly tailored because it can apply to parents like him, whose rights are terminated involuntarily by default rather than a contested termination proceeding. These arguments are unavailing. First, we are not persuaded that a due-process challenge to a statute as not narrowly tailored may be based on claimed underinclusiveness. *Cf. Williamson v. Lee Optical of Okla.*, 348 U.S. 483, 489, 75 S. Ct. 461, 465 (1955) (explaining that the state is not bound to address all problems at the same time or in the same way). Second, the presumption is rebuttable; it merely shifts the burden of production to the parent to prove fitness. Third, there is no functional distinction between a parent whose rights are terminated after a contested trial and a parent whose rights are terminated through a default judgment. Both situations involve a judicial determination that termination is warranted. In sum, we find no compelling reasons to depart from *P.T.*

Appellants next challenge the district court's order relieving the county of the obligation to make reasonable efforts to address the issues leading to the termination petition. Appellants frame this argument as a procedural due-process challenge to Minn. Stat. § 260C.001, subd. 3, arguing that their limited financial resources and lack of help from the county unfairly hampered their ability to rebut the presumption of palpable unfitness. They did not raise this issue in the district court. Issues not presented to the district court, including constitutional questions, are waived on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557

(Minn. 1981) (declining to address a constitutional issue raised for the first time on appeal from a termination of parental rights).

Even if appellants preserved this issue for our review, the argument fails on the merits. In *P.T.*, we rejected this precise challenge. 657 N.W.2d at 584, 586 (holding that there is no constitutional right to judicial review of a social service agency's efforts at reunification and that "elimination of the reasonable efforts requirement in section 260C.001, subdivision 3 . . . does not violate the Minnesota Constitution"). And we are not persuaded by appellants' suggestion that their limited financial resources unfairly prevented them from rebutting the presumption of palpable unfitness. Although the county was relieved of reasonable efforts, a county child-protection worker met with appellants and recommended parenting education and domestic-violence-prevention services that were available in the community at no cost. And mother could have demonstrated changed conditions simply by eliminating contact with father; she declined to do so. Because the statute does not violate the constitution and applies on the facts of this case, we discern no error by the district court. *See D.L.R.D.*, 656 N.W.2d at 251 (holding that district court correctly applied the statute when it relieved agency of its duty to make reasonable efforts).

II. The district court did not abuse its discretion by excluding evidence.

Evidentiary rulings are reviewed for abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). The rules of evidence apply to juvenile-protection proceedings. Minn. R. Juv. Prot. P. 3.02, subd. 1. Under the rules of evidence, only relevant evidence is admissible. Minn. R. Evid. 402. Relevant evidence

means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401.

The presumption of palpable unfitness is retrospective in nature; it establishes a baseline determination, based on prior conditions, that a parent is unable to appropriately care for a child. Rebutting the presumption requires a parent to come forward with evidence that the baseline condition no longer exists and that his or her parenting abilities have improved. *J.W.*, 807 N.W.2d at 446 (explaining that whether a parent has rebutted the statutory presumption depends in part on evidence of current circumstances); *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 545 (Minn. App. 2009) ("In order to rebut a presumption of palpable unfitness . . . a party must demonstrate that his or her parenting abilities have improved."). In other words, the evidence relevant to rebutting the presumption focuses on what the parent has accomplished since the prior termination and conditions existing at the time of the trial in the subsequent proceeding. *See J.W.*, 807 N.W.2d at 446-47. To demonstrate improvement, a parent typically utilizes available community resources. *See D.L.R.D.*, 656 N.W.2d at 251.

Father challenges the exclusion of evidence regarding how he acted around the four children at issue in the first termination proceeding, and the child-protection worker's answer to the question whether he needs a parenting assessment or services. Although father made no offer of proof, *see Becker v. Mayo Found.*, 737 N.W.2d 200, 215 (Minn. 2007) (noting that under Minn. R. Evid. 103(a)(2), "[a]n offer of proof is a pre-requisite to . . . appeals based on exclusion of evidence"), he argues that the evidence

is relevant and that the district court abused its discretion by excluding it. We are not persuaded.

The proposed evidence regarding how father cared for his four older children not only treads on ground covered during the prior termination proceeding, but it does not relate to his current ability to parent—the dispositive issue in cases where the presumption of palpable unfitness applies. The proposed testimony from the child-protection worker likewise lacks relevance. To rebut the presumption, father needed to produce evidence that at the time of the trial (May and July 2013) he was fit to parent. Because the county was relieved of its obligation to use reasonable efforts to reunite father and the child, the child-protection worker had no contact with father after November 2012. Any opinion the worker may have formed at that time concerning father's need for parenting services has little, if any, relevance to his parenting ability at the time of trial. Moreover, potential testimony that he does not need a parenting assessment or services, in the absence of evidence that he is currently able to parent the child, is irrelevant. On this record, we discern no abuse of discretion occasioned by the district court's evidentiary rulings.

III. The district court did not abuse its discretion by finding that termination is in the child's best interests.

We review a district court's ultimate determination that termination is in a child's best interests for abuse of discretion. *See In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012). Even if a statutory ground for termination exists, the district court must still find that termination of

parental rights is in the best interests of the child. *D.L.D.*, 771 N.W.2d at 545-46. In considering a child's best interests, the district court must balance the child's interest in preserving the parent-child relationship, a parent's interest in preserving that relationship, and any competing interests of the child. *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992). Competing interests include a "stable environment, health considerations and the child's preferences." *Id.* Where the interests of the parent and child conflict, the interests of the child are paramount. Minn. Stat. § 260C.301, subd. 7 (2012).

Appellants argue that the district court abused its discretion by basing its best-interests findings on circumstances that existed with respect to the children involved in the prior termination and by failing to properly weigh the child's interest in maintaining the parent-child relationship. We disagree. First, we reject appellants' assertion that the district court clearly erred in finding that the child would likely be exposed to domestic violence, prostitution, drug abuse, and housing instability if he were placed with appellants. That is how the statutory presumption of palpable unfitness works. In the absence of evidence rebutting the presumption, the district court must find that the conditions that led to the prior termination persist. Mother presented no evidence in this case, and father presented what the district court aptly characterized as "scant evidence." Father testified that he continues to live with mother and they still lack permanent, stable housing. He also testified that he is "the same guy" that he was at the time of the prior termination, stating that he has not changed at all. And the evidence shows that father did not complete even the initial phase of the domestic-abuse program that he initiated. On

this record, we discern no clear error in the district court's best-interests findings, including the finding that appellants will not be able to care for the child during the reasonably foreseeable future.

Second, the district court weighed the competing interests. The court acknowledged that the child has a relationship with appellants, but found that this interest is outweighed by the child's competing interest in having a safe, stable environment. Because the district court balanced the competing interests and the record supports the best-interests findings, we conclude that the court did not abuse its discretion in determining that termination serves the child's best interests.

Affirmed.