

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO D.D.B., A.D.B., D.D.W.,
T.D.W., AND D.D.B.

No. 42938

WILLISHA B.,
Appellant,

vs.

THE STATE OF NEVADA DIVISION
OF CHILD AND FAMILY SERVICES,
DEPARTMENT OF HUMAN
RESOURCES,
Respondent.

FILED

APR 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating parental rights. Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, Judge.

Willisha B. appeals from the district court order terminating her parental rights to her youngest three children, D.D.W., T.D.W. and D.B.¹ The Division of Child and Family Services (DCFS) first placed all five of Willisha's children in protective custody in 1997 due to neglect. After several neglect referrals stemming from Willisha's crack cocaine addiction, the children were removed from Willisha's care for the final time in April 2000. Willisha's sister first cared for the five children. Subsequently, a distant relative by marriage took the twin boys into her care, and the three girls remained with Willisha's sister. Willisha

¹The oldest and youngest children share the same initials. Therefore, in this order D.B. refers to the youngest child.

completed two drug rehabilitation programs, but returned to using cocaine after each program. According to her own testimony, she worked as a prostitute to fund her drug habit. In March of 2003, after failing to contact her case worker for six months, Willisha enrolled in an intensive, minimum two year rehabilitation program in Los Angeles, California.

After a bench trial, the district court granted the State's petition to terminate Willisha's parental rights to the three youngest children. The district court denied the petition as to the two oldest daughters. The court found that no adoptive placement for them existed and that the girls could remain with Willisha's sister as foster children.

Willisha appeals from the order of termination. She asserts that substantial evidence does not support the district court's findings of parental unfitness, failure of parental adjustment, token efforts to avoid being an unfit parent and that termination of parental rights served the best interests of the three children. We disagree and affirm the district court's judgment.

Discussion

Termination of parental rights implicates fundamental liberty interests.² A trial court may terminate a parent's rights if it finds clear and convincing evidence of parental fault, and that terminating the parent's rights is in the child's best interests.³ "This court will uphold termination orders based on substantial evidence, and will not substitute

²Matter of Parental Rights as to Q.L.R., 118 Nev. 602, 605, 54 P.3d 56, 58 (2002).

³Matter of Parental Rights as to N.J., 116 Nev. 790, 795, 8 P.3d 126, 129 (2000).

its own judgment for that of the district court.”⁴ Pursuant to NRS 128.105, while the primary consideration in terminating parental rights is the best interests of the child, the district court must also find evidence of parental fault.⁵ NRS 128.105(2) requires that the petitioning party establish at least one type of parental fault. The relevant types of parental fault in this case include unfitness as a parent, failure of parental adjustment and only token efforts to avoid being an unfit parent.⁶

Parental Fault

Willisha argues that substantial evidence does not support the district court’s finding that she is an unfit parent. An unfit parent is defined as “any parent of a child who, by reason of his fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support.”⁷ Factors the district court considers when determining parental unfitness include drug use,⁸ long-term failure by the parent to provide for the children’s physical, mental and emotional needs,⁹ and the inability of a state agency to reunite the family despite the agency’s reasonable efforts.¹⁰

⁴Id.

⁵Id.

⁶NRS 128.105(2)(c), (d) & (f)(3).

⁷NRS 128.018.

⁸NRS 128.106(4).

⁹NRS 128.106(5).

¹⁰NRS 128.106(8).

In the six years between the first neglect referral and the trial, Willisha never demonstrated the ability to remain drug-free outside of a treatment program. To demonstrate, Willisha abused cocaine for more than ten years and, although she completed two rehabilitation programs, she resumed drug abuse after each. She also used crack cocaine when she was pregnant with her youngest child. Finally, Willisha engaged in prostitution to fund her drug habit while her sister cared for her children.

While Willisha's enrollment in the current rehabilitation program signals her laudable intent to overcome her addiction, it is impossible to predict whether Willisha will be successfully rehabilitated. Substantial evidence therefore supports the district court's finding that Willisha is an unfit parent. Moreover, the State properly applied the statutory presumptions regarding failure of parental adjustment¹¹ and token efforts to care for the children and avoid being an unfit parent.¹²

Children's best interests

Willisha argues that she presented sufficient evidence to rebut the statutory presumption that termination of parental rights is in her children's best interests. Willisha contends that the only way to keep the five siblings together is to place them with her, that the children are bonded with her, that she has maintained consistent contact with her children and that they desire to be reunified with her.

¹¹NRS 128.109(1)(b); NRS 128.0126.

¹²NRS 128.109(1)(a). See also, Matter of Parental Rights as to J.L.N., 118 Nev. 621, 626, 55 P.3d 955, 958 (2002) (noting that the statutory presumptions are rebuttable).

NRS 128.109(2) provides that the court must presume that the best interests of the child are served by terminating parental rights if the child has been placed outside the home and resided outside the home for fourteen of twenty consecutive months. “The continuing needs of a child for proper physical, mental and emotional growth and development are the decisive considerations in proceedings for termination of parental rights”¹³ and are relevant to the best interests of the child.¹⁴

While we firmly discourage separating siblings, substantial evidence supports the district court’s determination that termination of Willisha’s parental rights to her three youngest children will serve her children’s best interests. The district court found that the twin boys were doing well living with the relative by marriage and that the relative was willing to adopt them and the youngest daughter. The court further decided that, because Willisha’s sister was unwilling to adopt any of the children except as a last resort, adoption by the other relative clearly served the three youngest children’s best interests. In this case, we agree with the court’s reasoning that at least part of the family can attain permanency. After Willisha’s long history of child neglect, drug abuse and inability to care and provide for her children, the children should not remain in a state of permanent flux when a solid adoption opportunity exists. Accordingly, the district court properly applied the presumption set forth in NRS 128.109(2).


¹³Matter of Parental Rights as to D.R.H., 120 Nev. __, __, 92 P.3d 1230, 1237 (2004) (quoting NRS 128.005(2)(c)).


¹⁴Id.

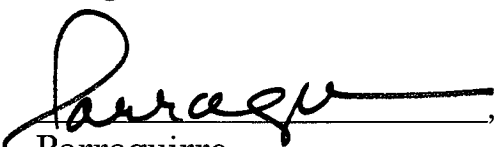
CONCLUSION

Substantial evidence supports the district court order granting the petition to terminate Willisha B.'s parental rights to her three youngest children, D.D.W., T.D.W., and D.B. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Special Public Defender David M. Schieck
Attorney General Brian Sandoval/Carson City
Clark County Clerk