

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO W.R.W. AND A.E.W.,

No. 43195

DARREL W.,
Appellant,

vs.

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

FILED

MAY 17 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. First Judicial District Court, Carson City; William A. Maddox, Judge.

The district court found that it possessed jurisdiction to rule that Darrel W. failed to adjust as a parent, that there was a risk of serious emotional injury if the children were returned to Darrel W. and that he made only token efforts to support and communicate with his children. Based on these findings the district court determined that it served the children's best interests to terminate Darrel W.'s parental rights.

DISCUSSION

Jurisdiction

Darrel W. argues that the district court lacked jurisdiction to rule on the termination, because the petition to terminate rights did not allege what he did or did not do to warrant termination and did not allege that the children were Nevada residents. The State contends that

jurisdiction is proper under NRS 128.030, which provides that termination petitions must state one of the following in order to establish jurisdiction:

1. The county in which the child is found;
2. The county in which the acts complained of occurred; or
3. The county in which the child resides.

The children were placed into protective custody December 25, 2000, in Carson City, Nevada, because there was no adult available to care for them. Because the children were found in Carson City, NRS 128.030(1) provides for jurisdiction. Additionally, the State retained jurisdiction over the children in the First Judicial District under the Interstate Compact on Placement of Children (ICPC), codified in NRS chapter 127. NRS 127.330, article V(a), specifically provides for retention of jurisdiction over children, like those here, transferred to other states under the ICPC. “[T]he statutory scheme serves a twofold purpose: to assure that the placement will be in the child’s best interests and to prevent the states from exporting their foster care responsibilities to other States.”¹

The triggering act in question did not involve Darrel, but occurred in Carson City. Even though the children were sent to reside with relatives in California, the ICPC is clear that the original state retains jurisdiction. Based on NRS 128.030(1) and NRS 127.330, the State retained jurisdiction over the children and properly filed the petition to terminate parental rights. The district court had the power to hear the petition, and therefore, Darrel W.’s argument is without merit.

¹Matter of H/M. Children, 634 N.Y.S.2d 675, 678 (N.Y. App. Div. 1995).

Notice

Darrel W. contends that conclusory framing in the petition failed to provide adequate notice to allow him to properly defend the termination proceeding. We disagree. NRS 128.050(2)(a) requires that a petition to terminate parental rights “must set forth plainly . . . [t]he facts which bring the child within the purview of this chapter.” Here, the petition clearly sets forth the factual and legal basis for the action requested. Further, in addition to the petition itself, Darrel received copies of all reports and orders generated in the matter and actively engaged in the litigation over his parental rights.² Accordingly, the district court properly denied Darrel W.’s motion to dismiss, as he had sufficient information from which to defend the parental rights termination petition.

Parental rights termination

We will uphold parental termination orders if they are supported by substantial evidence.³ In order to terminate parental rights, a petitioner must prove at trial, by clear and convincing evidence, (1) that termination is in the child’s best interests and (2) parental fault.⁴ On appeal, we will not substitute our own judgment for that of the trial court,

²See NRCP 8(a).

³See Matter of Parental Rights as to K.D.L., 118 Nev. 737, 744, 58 P.3d 181, 186 (2002).

⁴See Matter of Parental Rights as to N.J., 116 Nev. 790, 801, 8 P.3d 126, 133 (2000); see also, NRS 128.105.

which “had all parties before it, observed their demeanor and weighed their credibility, especially in an area of such sensitivity.”⁵

Best interests

We conclude that substantial evidence supports the district court’s finding by clear and convincing evidence that the children’s best interests are served by terminating Darrel W.’s parental rights. Darrel W. was never able to fully demonstrate that he had the ability to care for the children. Testimony showed that the new placement provides a positive environment for the children, and one to which they are reacting well. Finally, the children themselves stated their desire for the termination of Darrel’s parental rights and adoption by the family members with whom they now reside. The Nevada Legislature has provided that “[t]he 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.”⁶ We conclude that the physical, mental and emotional growth of the children will best be served by termination.

Parental fault

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.⁷ NRS 128.105(2) requires that the petitioning party establish at least one factor of parental fault. The relevant factors of parental fault in this case include failure of parental adjustment, risk of

⁵Carson v. Lowe, 76 Nev. 446, 451-52, 357 P.2d 591, 594 (1960).

⁶NRS 128.005(2)(c).

⁷Matter of Parental Rights as to D.R.H., 120 Nev. 422 ____, 92 P.3d 1230, 1234 (2004); See also NRS 128.105.

serious emotional injury to the children, and token efforts to support or communicate with the children.⁸ We conclude that parental fault was proved by clear and convincing evidence in this case.

(1) Failure of parental adjustment

Failure of parental adjustment “occurs when a parent or parents are unable or unwilling within a reasonable time to correct substantially the circumstances, conduct or conditions which led to the placement of their child outside of their home.”⁹ Darrel W. failed to correct the circumstances and conditions of his home environment that led to placement, failed to obtain legal custody of his children, failed to provide proof of attendance at Alcoholics Anonymous meetings and proof of completion of anger management classes, and failed to complete the requirements of three ICPC plans.

(2) Risk of serious emotional injury

Under NRS 128.105(2)(e) the district court was required to examine, using the best interests standard, whether returning the children to Darrel W. would create a risk of serious emotional injury to the children. The district court found, based on the testimony of an expert witness and inquiry with the children, that they would suffer serious risk of emotional injury if returned to Darrel W. Substantial evidence supports the finding of serious risk of emotional injury to the children if they are returned to Darrel W.

(3) Token efforts

⁸NRS 128.105(2)(d), (e) & (f)(1).

⁹NRS 128.0126.

Darrel W. argues that he made consistent attempts to communicate with the children and made child support payments during their foster care and that his efforts to support and communicate with the children were not mere token efforts. NRS 128.109(1)(a) directs that “[i]f the child has resided outside of his home pursuant to that placement for 14 months of any consecutive 20 months, it must be presumed that that parent . . . [has] demonstrated only token efforts to care for the child.” NRS 128.105(f)(1) describes lack of support or communication with the children as token efforts.


Both children have remained outside of Darrel W.’s care for over three years, exceeding the time limit imposed by NRS 128.109(1)(a). Substantial evidence, including Darrel W.’s lack of correspondence and sporadic contact supports the district court’s finding that Darrel W. made only token efforts to communicate with his children.

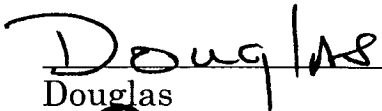
CONCLUSION

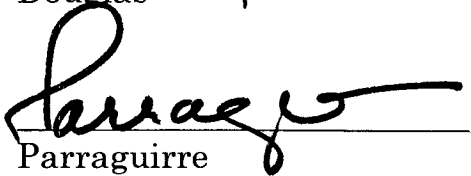
We conclude that the district court properly exercised jurisdiction over the proceeding to terminate the parental rights of Darrel W. The district court’s findings that termination is warranted based on parental fault and the best interests of the children are supported by

substantial evidence. Accordingly, we affirm the district court's order.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. William A. Maddox, District Judge
Robert B. Walker
Attorney General Brian Sandoval/Carson City
Crowell Susich Owen & Tackes
Carson City Clerk