

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO D. L. M.

No. 43361

LAMARR D. M.,  
Appellant,

vs.

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

**FILED**

DEC 22 2004

LAURENCE E. HILLIUM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

In order to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the best interest of the child and that parental fault exists.<sup>1</sup> If substantial evidence in the record supports the district court's determination that clear and convincing evidence warrants termination, this court will uphold the termination order.<sup>2</sup> In the present case, the district court determined that it is in the child's best interest that appellant's parental rights be terminated. The district court also found parental fault on the grounds of abandonment and failure of parental adjustment.

<sup>1</sup>See Matter of Parental Rights as to D.R.H., 120 Nev. \_\_\_, \_\_\_, 92 P.3d 1230, 1234 (2004); NRS 128.105.

<sup>2</sup>Matter of D.R.H., 120 Nev. at \_\_\_, 92 P.3d at 1234.

Under NRS 128.012(1), the term “abandonment of a child” is defined as “any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child.” Intent is the decisive factor in abandonment and may be shown by the facts and circumstances.<sup>3</sup> However, a presumption of abandonment arises when “a parent . . . leave[s] the child in the care and custody of another without provision for his support and without communication for a period of 6 months.”<sup>4</sup> The application of the statutory presumption of abandonment contained in NRS 128.012(2) is not discretionary.<sup>5</sup> Here, the district court found that appellant had left the child in the care and custody of the foster family without provision for his support and without communication for a period in excess of six months. Thus, the district court did not abuse its discretion when it found that appellant had abandoned the child.

Failure of parental adjustment occurs when a parent is unable, within a reasonable time, to correct the conduct that led to the child being placed outside the home, despite reasonable and appropriate efforts made by the State to return the child to his home.<sup>6</sup> Here, appellant was provided with a case plan, and although he was allowed ample time in which to meet the plan’s terms, appellant did not comply with the plan in

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<sup>3</sup>Smith v. Smith, 102 Nev. 263, 266, 720 P.2d 1219, 1221 (1986), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).

<sup>4</sup>NRS 128.012(2).


<sup>5</sup>See Matter of N.J., 116 Nev. at 804, 8 P.3d at 135.


<sup>6</sup>NRS 128.0126.

any way. Moreover, evidence was presented that the State regularly scheduled formal reviews to evaluate appellant's progress with his case plan, and that appellant was informed of the scheduled reviews, but did not attend them. Thus, the district court did not abuse its discretion when it found parental fault on the basis of failure of parental adjustment.

Having reviewed the record, we conclude that the district court's decision is supported by substantial evidence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

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<sup>7</sup>We note that appellant's failure to pay the supreme court filing fee could constitute a basis for dismissing this appeal. NRS 2.250(1)(a).

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division  
Attorney General Brian Sandoval/Las Vegas  
Lamarr D. M.  
Clark County Clerk

DOUGLAS, J., dissenting:

The appellant was incarcerated on the day of the termination hearing and had been incarcerated on other dates prior to the termination hearing date. Incarceration of a parent must be viewed as an important factor in termination of parental rights in light of Matter of Parental Rights as to Q.L.R. and its findings related to abandonment of a child during a parent's incarceration.<sup>1</sup> The termination of the parent-child relationship implicates fundamental liberty interests that are protected by the United States Constitution.<sup>2</sup> Thus, the district court should be required to make a finding that the parent's incarceration supports abandonment or was not a factor as to the termination of parental rights.

This record is silent as to the effect of incarceration as to the parent-child relationship and/or compliance with the parent's case plan; therefore I offer this dissent.

Douglas, J.  
Douglas

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<sup>1</sup>Matter of Parental Rights as to Q.L.R., 118 Nev. 602, 54 P.3d 56 (2002); NRS 128.106(6).

<sup>2</sup>Santosky v. Kramer, 455 U.S. 745, 753 (1982); see also Stanley v. Illinois, 405 U.S. 645, 651 (1972).