

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO N. S. Y., A MINOR
CHILD,

BILL S. Y.,
Appellant,

vs.

TIFFANY R. M. H.,
Respondent.

No. 43506

FILED

JAN 20 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 appellant's parental rights. Third Judicial District Court, Churchill County; Archie E. Blake, Judge.

This case was previously before this court in Docket No. 39616. On August 25, 2003, the matter was remanded on a narrow issue concerning whether appellant waived his right to participate at the termination hearing by deposition under NRS 50.215(2).¹ On remand, the district court ordered appellant to participate in the termination

¹NRS 50.215(2) (providing that “[i]n a civil action, if the witness is imprisoned in the county where the action or proceeding is pending, his production may be required by the court or judge. In all other cases, his examination, when allowed, must be taken upon deposition”).

proceedings by deposition and allowed the parties to request a supplemental hearing. Neither party requested a supplemental hearing. The district court reviewed appellant's deposition and entered an order on June 1, 2004, that terminated appellant's parental rights.

In order to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the child's best interest and that parental fault exists.² Under NRS 128.105(2), grounds for termination require that at least one factor delineated in the statute establish parental fault. 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.³ 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 by clear and convincing evidence parental fault on the grounds of abandonment, neglect and unfitness.

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." A presumption exists that

²See Matter of Parental Rights as to D.R.H., 120 Nev. ___, ___, 92 P.3d 1230, 1234 (2004); NRS 128.105.

³Matter of D.R.H., 120 Nev. at ___, 92 P.3d at 1234.

[i]f the putative father of a child fails to acknowledge the child or petition to have his parental rights established in a court of competent jurisdiction before a hearing on a petition to terminate his parental rights, he is presumed to have intended to abandon the child.⁴

Here, the district court found that appellant had failed to overcome the statute's abandonment presumption, as appellant never attempted to establish his parental rights. While the statutory language lacks clarity, a reasonable construction allows the putative father to acknowledge the child or petition for parental rights in order to avoid the presumption of abandonment.⁵ Consequently, the district court erred when it failed to consider whether appellant had acknowledged the child and erred in concluding that appellant had failed to overcome the statutory presumption of abandonment without considering both factors under NRS 128.095. Nevertheless, the district court also found, by clear and


⁴NRS 128.095.

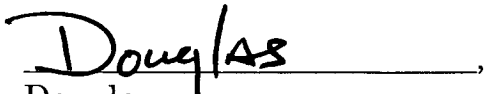
⁵See State, Dep't of Mtr. Vehicles v. Lovett, 110 Nev. 473, 477, 874 P.2d 1247, 1249-50 (1994) (quoting State, Dep't Mtr. Vehicles v. Vezeris, 102 Nev. 232, 236, 720 P.2d 1208, 1211 (1986) (stating that when statutory language is ambiguous or otherwise unclear, the court will construe it according to that which "reason and public policy would indicate the legislature intended").

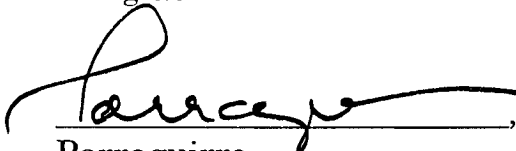
convincing evidence, that appellant had neglected⁶ the child and that he was an unfit parent.⁷

We conclude that the record contains substantial evidence to support the district court's findings that the child's best interest are served by termination and that appellant had neglected the child and was an unfit parent. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

⁶See NRS 128.105(2)(b) (providing that parental rights may be terminated for "[n]eglect of the child"); NRS 128.014(2) (defining "[n]eglected child" as a child "[w]hose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals or well-being").

⁷NRS 128.018 (providing that a parent is unfit when by his or her own fault, habit, or conduct toward the child, the parent fails to provide the child with proper care, guidance, and support).

cc: Hon. Archie E. Blake, District Judge
Rusty D. Jardine
Mackedon, McCormick & King
Churchill County Clerk