

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 43544

FRANK P.,
Appellant,

vs.

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

FILED

NOV 15 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF 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.¹ 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.² 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

¹See Matter of Parental Rights as to D.R.H., 120 Nev. ___, ___, 92 P.3d 1230, 1234 (2004); NRS 128.105.

²Matter of D.R.H., 120 Nev. at ___, 92 P.3d at 1234.

parental fault on the grounds of unfitness,³ failure of parental adjustment,⁴ and only token efforts.⁵

As for the child's best interest, the district court noted that the child has been integrated into the foster family with whom she lives and the foster parents have expressed a desire to adopt her. Moreover, since the child has been with the foster family, she no longer requires medication and she is doing well in school.

Here, the district court found that appellant failed to substantially comply with his case plan. Specifically, under the case plan, appellant was required to, among other things, maintain contact with the child and obtain suitable housing in which he and the child could live together. The district court observed that appellant "made few visits [with the child] and cancelled many more." Moreover, appellant did not find suitable housing, even though he was given a reasonable time in which to do so. The district court expressed concern for appellant's lack of commitment to the child. The court was also especially concerned that appellant was aware of the child's mother's mental instability and yet appellant never attempted to formally gain custody of the child.

³NRS 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).

⁴NRS 128.0126 (providing that 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).

⁵NRS 128.109(1)(a) and (2) (providing that if a child has been in foster care for more than fourteen months it is presumed that the parent has made only token efforts to care for the child and termination is in the child's best interest).

Additionally, the court noted that before November 2002, appellant did “virtually nothing” for the child. The district court was not impressed that appellant paid child support, since it was obtained through the welfare system, not voluntarily from appellant.

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.⁶

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

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

⁶Appellant did not pay the filing fee required by NRS 2.250(1)(a). While appellant filed a motion in the district court to proceed on appeal in forma pauperis under NRAP 24(a), it appears that the district court did not rule on that motion as required by the rule.