

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO D. M., A MINOR.

No. 44552

MARTIN E. M.,

Appellant,

vs.

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

FILED

JUL 06 2005

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 children's best interests 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

¹See Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004); NRS 128.105.

²Matter of D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

that it is in the child's best interests that appellant's parental rights be terminated. The district court also found by clear and convincing evidence appellant's unfitness, failure of parental adjustment, and only token efforts.

As for unfitness,³ 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.⁴ Failure of parental adjustment⁵ occurs when a parent is unable or unwilling, within a reasonable time, to substantially correct the conduct that led to the child being placed outside the home.⁶ Evidence of failure of parental adjustment is established by the parent's failure to comply with the case plan to reunite the family within six months after the child has been placed outside the home.⁷ With respect to token efforts, under NRS 128.105(2)(f), parental fault may be established based on only token efforts to (1) support or communicate with the child, (2) prevent neglect of the child, (3) avoid being an unfit parent, or (4) eliminate the risk of serious physical, mental or emotional harm to the child. Moreover, under NRS

³NRS 128.105(2)(c).

⁴NRS 128.018.

⁵NRS 128.105(2)(d).


⁶NRS 128.0126.

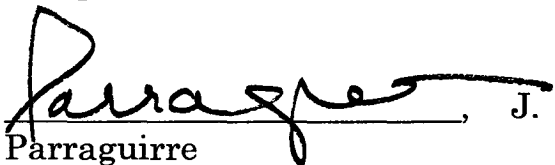
⁷NRS 128.109(1)(b).

128.109(1)(a), 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. Finally, a district court must consider a parent's incarceration in determining whether termination is proper.⁸ Incarceration alone, however, does not establish parental fault as a matter of law.⁹

Having reviewed the record, we conclude that substantial evidence supports the district court's determination that respondent established by clear and convincing evidence that that termination was warranted. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Maupin


_____, J.
Parraguirre

⁸Matter of Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002).

⁹Id. at 628, 55 P.3d at 959-60.

¹⁰We note that appellant has failed to pay the filing fee required by NRS 2.250(1)(a). See NRAP 3(f). Although appellant's failure to pay the filing fee constitutes an independent basis for dismissal, we have nonetheless considered the merits of this appeal.

DOUGLAS, J., dissenting:

In my view, the district court improperly focused on appellant's incarceration in terminating his parental rights. Appellant's significant progress toward reunification warrants an additional opportunity for appellant to comply with a new case plan, including appropriate conditions. I therefore would reverse the district court's order.

Douglas, J.
Douglas

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