IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO N.A.S.

THE STATE OF NEVADA EX REL. ITS DEPARTMENT OF HUMAN RESOURCES, DIVISION OF CHILD AND FAMILY SERVICES,
Appellant,
vs.
CONSTANCE F.S.,
Respondent.

No. 45500

FILED

APR 19 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's petition to terminate respondent's parental rights. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

The Division of Child and Family Services (DCFS) appeals the district court's denial of its petition to terminate the parental rights of Constance F.S. The district court concluded that, although Constance committed parental fault, N.A.S.'s best interests were not served by terminating her parental rights.

The DCFS argues that the district court incorrectly applied the statutory presumptions in NRS 128.012 and 128.109, erred in its consideration of N.A.S.'s best interests, and ignored the guidelines included in the federal Adoption and Safe Families Act (ASFA). We conclude the district court acted appropriately and thus affirm.

Parental Fault

In order to terminate parental rights, the district court must find the parent committed parental fault under at least one of the

enumerated factors in NRS 128.105: (1) abandonment of the child; (2) neglect of the child; (3) unfitness of the parent; (4) failure of parental adjustment; (5) risk of injury to the child if returned to the parent's home; or (6) token efforts by the parents.[1]

The district court concluded Constance had committed parental fault under NRS 128.105(2)(b) (neglect of the child) and NRS 128.105(2)(c) (unfitness of the parent); therefore, we do not need to consider the DCFS's claim that the district court erred by failing to find Constance had committed parental fault by abandoning N.A.S. The showing of just one ground of parental fault is sufficient.[2]

Even if the DCFS's claim is considered, Constance presented sufficient evidence to rebut the presumption contained in NRS 128.012(2) that she had abandoned N.A.S. She testified she had sent cards and other items to N.A.S. throughout December 2004 and January 2005. This attempt to communicate with the child prior to the DCFS's termination petition demonstrates Constance did not evince "a settled purpose . . . to forego all parental custody and relinquish all claims to the child."[3]

N.A.S.'s best interests

We conclude the district court did not err in concluding that termination was not in N.A.S.'s best interest.

The DCFS argues that the district court failed to apply the statutory presumption in NRS 128.109(2), which presumes termination is

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[1]NRS 128.105(2)(a)-(f).

[2]Matter of Parental Rights as to N.J., 116 Nev. 790, 801, 8 P.3d 116, 133 (2000).

[3]NRS 128.012(1).

in the child's best interest when the child resides outside the parent's home for 14 of any 20 consecutive months.[4] However, the district court did apply this presumption but concluded the ongoing criminal investigation against Constance caused her lengthy separation from N.A.S Thus, the district court concluded that, if the criminal investigation had not occurred, the termination petition would have been filed much sooner and the presumption of NRS 128.109(2) would not have applied. This conclusion was not erroneous.

The DCFS also asserts that the district court erred by solely considering Constance's behavior rather than the best interests of N.A.S. We disagree. Although the district court focused on Constance's efforts to improve herself while in prison, it properly considered how her efforts impacted N.A.S. While indicating that Constance should never regain custody of N.A.S., the district court concluded that N.A.S.'s best interests were not served by terminating all contact with Constance when she was active in improving herself and contesting the petition.

We cannot hold this conclusion was erroneous, particularly in light of the seriousness of a decision to terminate parental rights.[5] We

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[4] If a child has been placed outside of his home pursuant to chapter 432B of NRS and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights.

NRS 128.109(2).

[5] Drury v. Lang, 105 Nev. 430, 433, 776 P.2d 843, 845 (1989) ("[T]ermination of a parent's rights to her child is tantamount to imposition of a civil death penalty."); see Smith v. Smith, 102 Nev. 263, 266, 720 P.2d 1219, 1220 (1986) ("Severance of parental rights is an

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have previously stated that termination is an extreme measure that must be applied with great caution.[6] The evidence at trial indicated Constance was a good mother prior to meeting her ex-boyfriend and is currently taking steps to improve herself. The district court is in a better position to weigh the evidence and gauge the credibility of witnesses.[7] We will not second-guess the district court's determination that N.A.S.'s interests are best served by maintaining some contact with Constance while continuing to live with relatives.

Application of the Adoption and Safe Families Act

The DCFS also argues that a new trial is merited because the district court failed to follow the federal Adoption and Safe Families Act (ASFA). We conclude this claim lacks merit.

The DCFS points to no ASFA provisions that conflict with the statutes applied by the district court and acknowledges that the Nevada Legislature adopted the relevant provisions of ASFA in NRS Chapters 127, 128, and 432B. Thus, in order to comply with ASFA, the district court merely had to follow the Nevada statutory scheme for petitions to terminate parental rights as delineated in NRS Chapter 128. As detailed above, the district court appropriately applied these statutes.

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. . . *continued*
exercise of awesome power, a power which this court questions closely. The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents." (citations omitted)).

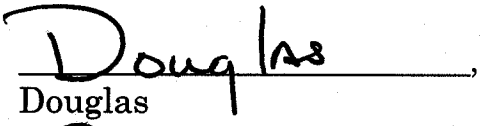
[6]Carson v. Lowe, 76 Nev. 446, 451, 357 P.2d 591, 594 (1960).

[7]Jacobson v. Best Brands, Inc., 97 Nev. 390, 392, 632 P.2d 1151, 1152 (1981).

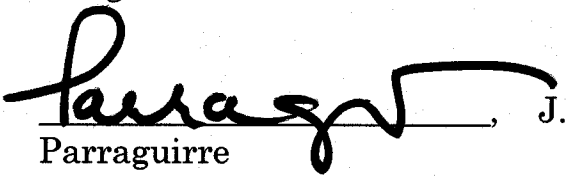
Conclusion

For the foregoing reasons, we affirm the district court's order denying the DCFS's petition to terminate Constance's parental rights.

It is so ORDERED.



_____, J.
Douglas



_____, J.
Parraguirre

cc: Hon. David R. Gamble, District Judge
Attorney General George Chanos/Carson City
Roeser & Roeser
Douglas County Clerk

BECKER, J., dissenting:

Based upon the record before us, I cannot conclude that the district court applied the best interests of the child standard to the facts of this case. All of the comments by the district court emphasize giving the mother more time and another chance. This may well be in the best interests of the child, but the district court did not make any findings reflecting an analysis applying this standard. I would therefore reverse and remand for the district court to consider the termination petition in light of the best interests of the child standard.

Becker, J.
Becker