IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO B. R. W. AND K. N. W.

COLLEEN F. W.,
Appellant,
vs.
THE STATE OF NEVADA, DEPARTMENT OF HUMAN RESOURCES, DIVISION OF CHILD AND FAMILY SERVICES,
Respondent.

No. 45817

FILED

DEC 27 2005

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
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 children's best interests that appellant's parental rights be terminated. The district court also found by clear and convincing evidence failure of parental adjustment and only token efforts.

As for the children's best interests, the district court noted that the oldest child has been integrated into the foster family with whom

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

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

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she lives and the foster parents have expressed a desire to adopt her. Additionally, while the youngest child has returned to St. Jude, the district court stated that the goal is to stabilize the child and return her to the foster family and her sister. The foster parents remain committed to adopting both children.

As for parental fault, 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.[3] 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 case plan was devised.[4] Under NRS 128.105(2)(f), parental fault may be established based on only token efforts. 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, if a child has resided outside the home, after being placed in protective custody, for 14 months of any 20 consecutive months.[5]

Here, the district court found that although appellant attended counseling and completed a parenting class while in Texas, she did not address drug treatment or domestic violence; thus, she failed to complete her case plan. In addition, the court stated that upon her return to Nevada, appellant made no effort to engage services to assist her toward reunification. The record shows that by the time appellant returned to Nevada, the children had been in foster care for approximately two years.

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[3]NRS 128.0126.

[4]NRS 128.109(1)(b).

[5]NRS 128.109(1)(a).

Having reviewed the record, we conclude that substantial evidence supports the district court's conclusion that termination is warranted.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[7]

_____, J.
Douglas

_____, J.
Rose

_____, J.
Parraguirre

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[6]The record reveals that appellant challenged the district court's jurisdiction over the children under the Indian Child Welfare Act. See NRS 128.023; NRS 128.027. The record further shows that the Division of Child and Family Services provided the Muscogee (Creek) Nation with written notice of the proceedings and that the tribe did not intervene on the children's behalf. See NRS 128.023.

[7]Appellant failed to pay the filing fee required by NRS 2.250(1)(a) and NRAP 3(f); in response to our notice to pay the fee, she submitted an affidavit in support of her request to proceed in forma pauperis. Under NRAP 24(a), such a request must first be presented to the district court, and so appellant's request is improper. We note that failure to pay the filing fee or to properly obtain in forma pauperis status could constitute an independent basis for dismissing this appeal. Additionally, on October 7, 2005, appellant moved this court to admit exhibits in this court that the district court "Ordered not [Secured] or Admitted." This court cannot consider on appeal matters not properly appearing in the district court record. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981). Accordingly, to the extent that the documents contained in appellant's exhibits were filed in the district court, we grant appellant's motion.

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger/Juvenile Division
Colleen F. W.
Clark County Clerk