IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO J.C. AND A.T.

PAULA JEAN L.,
Appellant,
vs.
CLARK COUNTY DEPARTMENT OF FAMILY SERVICES,
Respondent.

No. 46240

FILED

DEC 01 2006

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

ORDER OF AFFIRMANCE

This is an 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 October 2005, appellant Paula Jean L.'s parental rights over her two children, J.C. and A.T., were terminated. The testimony at trial centered around Paula's alcohol abuse and her abusive relationship with William T., A.T.'s biological father. In this appeal, Paula asserts that the district court abused its discretion in terminating her parental rights for two reasons: (1) Clark County Department of Family Services (DFS) failed to prove that termination of parental rights was in the children's best interests; (2) DFS did not prove by clear and convincing evidence parental unfitness or failure of parental adjustment.

"[T]he district court in determining whether to terminate parental rights must consider both the best interests of the child and

parental fault."[1] This court has held that, "to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the child's best interest and that one of the enumerated parental fault factors set forth in NRS 128.105(2) exists."[2] Additionally, "[i]f substantial evidence in the record supports the district court's determination that clear and convincing evidence warrants termination, we will uphold the termination order."[3]

The best interests of the children are served by termination of Paula's parental rights

The best interests of the children are the primary consideration when determining if termination of parental rights is appropriate, and the Nevada Legislature has determined when a court will presume that termination best serves the children's interests.[4] NRS 128.105 provides that "[t]he primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination." Additionally, NRS 128.109(2) provides:

> 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.

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[1]Matter of Parental Rights as to N.J., 116 Nev. 790, 800, 8 P.3d 126, 132 (2000).

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

[3]Id.

[4]Matter of N.J., 116 Nev. at 800, 8 P.3d at 132.

In June 2003, J.C. and A.T. were declared wards of the juvenile court as abused/neglected children. Paula maintained custody of the children with formal supervision conducted by DFS. DFS and Paula entered into a case plan agreement, which was filed with the juvenile court and outlined Paula's goals. The case plan acknowledged that Paula admitted to an alcohol abuse problem and that she was in a domestically violent relationship. The case plan objectives included the provision that Paula was to maintain a drug and alcohol-free lifestyle. After Paula entered into the case plan agreement with DFS, the children were placed into protective custody on three separate occasions, the last of which occurred in December 2003. The children were eventually transferred to foster care. DFS petitioned the district court to terminate Paula's parental rights, which the district court did following a bench trial in August 2005.

Paula acknowledges that between December 31, 2003 and August 19, 2005, the children resided outside of her home. However, Paula argues that she provided evidence to rebut the presumption that the children's best interests would be served by termination of her parental rights. We disagree.

Although Paula made significant progress completing her case plan objectives, she repeatedly reverted to alcohol abuse and subjected herself to William's physical and verbal abuse.[5] Paula did not establish

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[5]Cf. Matter of Parental Rights as to Montgomery, 112 Nev. 719, 917 P.2d 949 (1996) (concluding that a mother's alcoholism was not an irremediable condition where the mother had a stable job and married a man with a stable job who did not drink).

that she could provide a home for her children free from alcohol abuse and domestic violence.[6] Paula failed to rebut the presumption that the children's best interests are served by the termination of her parental rights.[7]

Paula's parental fault

"In addition to considerations of the best interests of the [children], the district court must find at least one of the enumerated factors for parental fault."[8] These enumerated factors include parental unfitness and failure of parental adjustment.[9] NRS 128.106 provides that the "[e]xcessive use of intoxicating liquors" and the "[i]nability of appropriate public or private agencies to reunite the family despite reasonable efforts" are conditions the court shall consider, "which may diminish suitability as a parent."[10]

Unfitness

Paula argues that the district court's determination of parental unfitness was not established by clear and convincing evidence.

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[6]Irrespective of the presumption created by NRS 128.109(2), NRS 128.105(2)(e) requires that Paula provide a home free from the risk of serious physical, mental, or emotional injury.

[7]At this time we decline to determine the standard of proof necessary to rebut the presumption created by NRS 128.109(2) because the record provides substantial evidence that the best interests of the children would be served by terminating Paula's parental rights.

[8]Matter of N.J., 116 Nev. at 801, 8 P.3d at 133.

[9]Id.; NRS 128.105(2).

[10]NRS 128.106(4),(8).

Paula contends that although she had a relapse in her alcohol treatment, relapse is part of recovery and is not indicative of unfitness.

The record shows that Paula was repeatedly found to be under the influence of alcohol in violation of the case plan created by DFS. Testimony was presented at trial that showed, among other things, (1) that in September 2003, Paula was evicted from a domestic violence shelter for alcohol use; (2) that in October or November 2004, Paula was beaten so badly by William that she was not allowed to see her children; and (3) that in June 2005, Paula threatened to kill William during a heated argument. In this case, there is substantial evidence in the record that supports the district court's conclusion that Paula had more than a momentary relapse in her recovery and that she engaged in the excessive use of intoxicating liquors. The events described above show not only Paula's violation of her case plan, but also the poor environment Paula's alcohol consumption created for her children.

Additionally, DFS was unable to reunite Paula with her children despite reasonable agency efforts because Paula continued to lapse in her alcohol treatment and because she allowed William contact with the children in violation of a no-contact order. Despite participating in domestic violence classes and counseling, Paula remained involved with William, who has been arrested ten times for attacking her. Paula's decisions to continue her alcohol use and remain in contact with William provide substantial evidence to support the district court's determination that DFS established by clear and convincing evidence that reunification was not possible because Paula was an unfit parent.

Failure of parental adjustment

Paula contends that the record reflects that she complied with her case plan requirements and the record rebuts the presumption of failure of parental adjustment. We disagree.

NRS 128.109(1)(b) provides that

> If the parent or parents fail to comply substantially with the terms and conditions of a plan to reunite the family within 6 months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment as set forth in paragraph (d) of subsection 2 of NRS 128.105.

Paula's continued alcohol use demonstrates that she was unable to comply substantially with her case plan requirements. Indeed, a main objective of her case plan was for Paula to obtain and maintain an alcohol-free lifestyle. Although Paula periodically made efforts to follow the case plan, she continued to use alcohol and participate in a relationship which resulted in domestic violence in her home. Paula's failure to comply with her case plan provides substantial evidence to support the district court's determination of failure of parental adjustment.

Accordingly, we conclude that Paula failed to rebut the presumption that termination of her parental rights was in the children's best interests. We also conclude that substantial evidence supports the district court's determinations of parental unfitness and failure of

adjustment. Therefore, we affirm the district court's order terminating Paula's parental rights.[11]

It is so ORDERED.

_____, J.
Becker

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Christopher R. Tilman
Clark County District Attorney David J. Roger/Juvenile Division
Clark County Clerk

[11]We have also considered Paula's argument that DFS failed to provide her with appropriate notice of the case plan requirements, and we determine that this argument is without merit. Paula signed the case plan, which is dated June 3, 2003, and DFS worked with her for two years to help her attempts to achieve the outlined objectives.