

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO A.D.M. AND D.B.

No. 46439

THE STATE OF NEVADA AND CLARK
COUNTY DEPARTMENT OF FAMILY
SERVICES,
Appellants,

vs.

TRACY M.,
Respondent.

FILED

AUG 18 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition to terminate respondent's parental rights. Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, Judge.¹

In order to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the child's best interest and that parental fault exists.² This court will uphold a district court's termination order if substantial evidence supports the decision.³

¹We have determined that this appeal should be submitted for decision on the briefs and appellate record without oral argument. See NRAP 34(f)(1).

²See Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004); NRS 128.105.

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

Appellants contend that the district court erred when it denied their termination petition because the petition established by clear and convincing evidence that respondent Tracy M. had abandoned⁴ the children and that the children had resided outside of the home for more than 14 of 20 months and, thus, it was presumed that termination was in the children's best interests.⁵

Here, the district court denied appellants' termination petition after it determined that appellants failed to meet their burden. In particular, the district court concluded that although Tracy had been absent from the children's lives for approximately one year, she did not intend to abandon the children. Further, the court noted that it needed more information regarding Tracy's mental health, whether she has a drug problem, and whether Tracy is able to complete her case plan.⁶ Moreover, the district court noted that the children are not residing in a foster home in which adoption is possible and that more effort is necessary before the children are placed with an adoptive family. The court stated

⁴Smith v. Smith, 102 Nev. 263, 266, 720 P.2d 1219, 1221 (1986) (noting that intent is the decisive factor in abandonment and may be shown by the facts and circumstances), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).

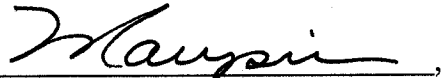
⁵See NRS 128.109(1)(b) (establishing a presumption of failure of parental adjustment if a child is removed from parental custody and a parent fails to substantially comply with a reunification plan within six months after the child is placed or the plan is filed, whichever occurs later).


⁶The record shows that it is unclear precisely when Tracy received her case plan.

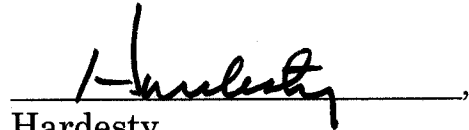
that under these circumstances, Tracy "should be given the benefit of the additional time to pursue reunification efforts."

Having reviewed the record and considered the parties' briefs, we conclude that substantial evidence supports the district court's order denying appellants' petition to terminate respondent's parental rights. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

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

⁷On August 15, 2006, we entered an order directing appellants to file an index to their appendix. In light of this order, no index to the appendix is necessary.