

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 46804

CLARK COUNTY DEPARTMENT OF  
FAMILY SERVICES,

Appellant,

vs.

ROBERT P.,

Respondent.

**FILED**

JAN 17 2007

BY *Janette M. Bloom*  
JANNETTE M. BLOOM  
CLERK OF SUPREME COURT  
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.

In this case, the Clark County Department of Family Services (DFS) seeks to terminate Robert's parental rights. Robert was convicted as a habitual felon and is currently incarcerated. The DFS argues that Robert, as a habitual felon, demonstrated habits which render him fundamentally unfit to be a parent because, as a result of incarceration, he is unable to provide for his family and parent his children.

"[W]e will not attempt to substitute our judgment for that of the trial court in an area of heightened sensitivity, since the trial court was in a position to observe the demeanor of the parties and weigh their credibility."<sup>1</sup> Consequently, this court reviews the district court's findings

<sup>1</sup>Matter of Parental Rights as to C.J.M., 118 Nev. 724, 732, 58 P.3d 188, 194 (2002).

for an abuse of discretion,<sup>2</sup> and will only disturb a district court's findings of fact or order terminating or upholding parental rights if they are not supported by substantial evidence.<sup>3</sup>

Under NRS 128.105, the DFS must demonstrate that it is in the children's best interest for Robert's parental rights to be terminated and must also show parental fault. Regarding parental fault, the DFS argues that Robert is unfit because he is a habitual criminal and, under NRS 128.106(6),

[c]onviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development.<sup>4</sup>

However, Robert's crimes are non-violent, and he was active in his children's care before his current incarceration.

Based on our review of the facts, substantial evidence supports the district court's decision not to terminate Robert's parental rights. Accordingly, the district court has not abused its discretion and we

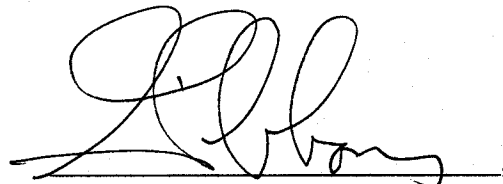
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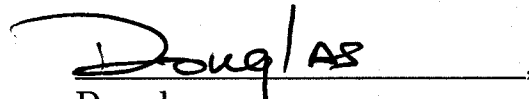
<sup>2</sup>NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004).

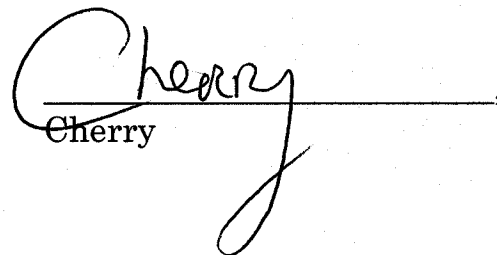
<sup>3</sup>Matter of Parental Rights as to N.J., 116 Nev. 790, 795, 8 P.3d 126, 129 (2000).

<sup>4</sup>Unlike other jurisdictions, Nevada does not provide for termination of parental rights for habitual felons or the simple fact of incarceration. See Matter of Parental Rights as to Q.L.R., 118 Nev. 602, 607-08, 54 P.3d 56, 59 (2002); see, e.g., Fla. Stat. Ann. § 39.806 (West Supp. 2006).

ORDER the district court's order upholding Robert's parental rights AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division  
Clark County District Attorney David J. Roger/Civil Division  
Mills & Mills  
Clark County Clerk