

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO A.P.

No. 47233

JOHN PATTON,  
Appellant,

vs.

THE STATE OF NEVADA DIVISION  
OF CHILD AND FAMILY SERVICES,  
DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES,  
Respondent.

**FILED**

DEC 07 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating appellant's parental rights. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

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.<sup>1</sup> This court will uphold a district court's termination order if substantial evidence supports the decision.<sup>2</sup> Here, the district court found that termination of appellant's parental rights was in the child's best interest. The district court also found by clear and convincing evidence appellant's unfitness, his failure of parental adjustment, and his mere token efforts.

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

<sup>2</sup>Matter of D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

On appeal, appellant contends that substantial evidence does not support the district court's termination order. Appellant maintains that respondent failed to make reasonable efforts to reunify the family, to evaluate his progress with the case plan, to provide certain community services, and to facilitate contact between appellant and his child. Appellant also argues that his procedural due process rights were violated by the termination of his parental rights because his attorney did not return his phone calls or was uncooperative by not providing the agency with proof of appellant's compliance with the case plan. Finally, appellant asserts that the termination of his parental rights violated the Americans with Disabilities Act (ADA).<sup>3</sup>

When determining whether a parent is unfit,<sup>4</sup> the district court must consider an agency's inability to reunite the family despite reasonable efforts on its part.<sup>5</sup> Failure of parental adjustment<sup>6</sup> occurs when a parent is unable or unwilling, within a reasonable time, to substantially correct the conduct that led to the child being placed outside of the home.<sup>7</sup> A parent's failure to comply with the case plan to reunite the family within six months after the child has been placed outside of the home is evidence of a parent's failure to adjust.<sup>8</sup> Parental fault may be

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<sup>3</sup>See 42 U.S.C. §§ 12131-34, 12181-88 (2000).

<sup>4</sup>NRS 128.018; NRS 128.105(2)(c).

<sup>5</sup>NRS 128.106(8).

<sup>6</sup>NRS 128.105(2)(d).

<sup>7</sup>NRS 128.0126.

<sup>8</sup>NRS 128.109(1)(b).

established when a parent only makes token efforts to support or communicate with the child or to prevent the child's neglect.<sup>9</sup> Moreover, if a child has been in foster care for fourteen of any twenty consecutive months, it is presumed that the parent has made only token efforts to care for the child and that termination is in the child's best interest.<sup>10</sup> Once the presumption applies, the parent has the burden to present evidence to overcome the presumption that termination of his rights is in the child's best interest.<sup>11</sup>

In order to satisfy procedural due process for a termination proceeding, a parent must be provided with a clear and definite statement of the allegations contained in the termination of parental rights petition, notice of the hearing and opportunity to be heard, and, in certain circumstances, appointed counsel.<sup>12</sup>

Having reviewed the record and considered the parties' briefs, we conclude that substantial evidence supports the district court's order granting respondent's petition to terminate appellant's parental rights, that procedural due process requirements were satisfied, and that appellant failed to present any evidence to establish that he had a

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<sup>9</sup>NRS 128.105(2)(f)(1) and (2).

<sup>10</sup>NRS 128.109(1)(a) and (2).

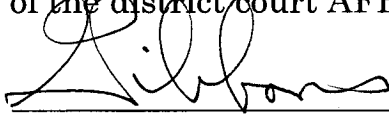
<sup>11</sup>Matter of Parental Rights as to A.J.G., 122 Nev. \_\_, \_\_, 148 P.3d 759, 764 (2006).

<sup>12</sup>Matter of Parental Rights as to N.D.O., 121 Nev. 379, 115 P.3d 223 (2005).

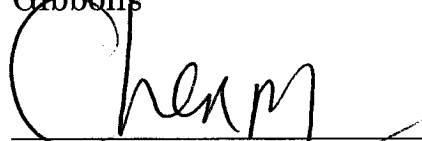
qualified disability under the ADA,<sup>13</sup> let alone whether an ADA disability may serve as a defense in a termination of parental rights proceeding.<sup>14</sup>

Accordingly, we


ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_ J.

Gibbons

  
\_\_\_\_\_ J.

Cherry

  
\_\_\_\_\_ J.

Saitta

cc: Hon. Robert W. Lane, District Judge  
Robert E. Glennen III  
Attorney General Catherine Cortez Masto/Las Vegas  
Nye County District Attorney/Pahrump  
Nye County Clerk

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<sup>13</sup>See 42 U.S.C. § 12102(2)(A) (defining “disability” as a physical or mental impairment that substantially limits one or more of an individual’s major life activities).

<sup>14</sup>See, e.g., M.C. v. Department of Children and Families, 750 So. 2d 705, 706 (Fla. Dist. Ct. App. 2000) (concluding that, because dependency proceedings are held for the benefit of the child, the ADA is inapplicable when used as a defense by the parent in termination proceedings).