

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 47344

DENISE C., A/K/A DENIESE C.; AND
EDGARDO D.,

Appellants,

vs.

STATE OF NEVADA DEPARTMENT
OF FAMILY SERVICES,

Respondent.

FILED

MAY 09 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating appellants' parental rights as to their minor children. Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, Judge.

This court reviews orders terminating parental rights for substantial evidence and will not substitute its own judgment for that of the district court.¹ The State is required to show at least one of several types of parental fault before the district court can grant a petition to terminate parental rights.² One type of parental fault is failure of

¹Kobinski v. State, 103 Nev. 293, 296, 738 P.2d 895, 897 (1987).

²NRS 128.105(2).

parental adjustment.³ The State is also required to show that termination of parental rights is in the best interests of the children.⁴

A failure of parental adjustment is an inability or unwillingness to correct the problems that cause children to be removed from a parent's home.⁵ The courts presume that if a parent fails to substantially comply with NDCFS's plan to reunite a family within 6 months of removal, that failure is evidence of failure of parental adjustment.⁶ Here, the twins were not reunited with their parents within six months of removal and the presumption of failure to make parental adjustments applies. We conclude that substantial evidence in the record supports the district court's finding that Edgardo and Denise did not rebut that presumption.

In termination proceedings, the primary concern is the best interests of the child.⁷ The Legislature requires the courts to presume that the best interests of a child will be served by terminating parental rights if the child has been removed from his parent's home by NDCFS and cannot be returned for 14 months out of any 20 consecutive month period.⁸ If the presumption applies, the burden of proving that the best

³Id.

⁴NRS 128.105.

⁵NRS 128.0126.

⁶NRS 128.109(1)(b).

⁷NRS 128.105.

⁸NRS 128.109(2).

interests of the children are not served by termination of parental rights shifts to the parents.⁹ That presumption “must not be overcome or otherwise affected by evidence of failure of the State to provide services to the family.”¹⁰ “The continuing needs of a child for proper physical, mental and emotional growth and development are the decisive considerations in proceedings for termination of parental rights.”¹¹

Here, the twins lived outside of Edgardo and Denise’s home for more than 14 of 20 consecutive months, so the presumption applies. We conclude that Edgardo and Denise did not rebut that presumption, because substantial evidence in the record supports the finding that the twins’ best interests are served by termination of parental rights. For all the reasons set forth above, we conclude that the district court properly determined that the twins’ best interests were served by terminating Edgardo and Denise’s parental rights. We have carefully examined

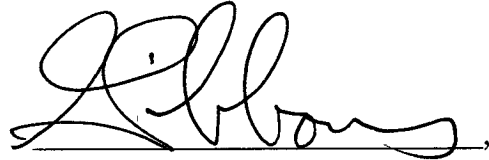
⁹See id.

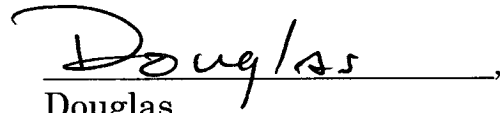
¹⁰NRS 128.109(3) (emphasis added).

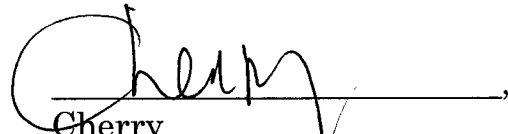
¹¹NRS 128.005(2)(c).

Denise and Edgardo's other assignments of error and conclude that they lack merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

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