

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 47347

ROBERT R. AND CYNTHIA R.,
Appellants,
vs.
WASHOE COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent.

FILED

MAY 30 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order terminating appellants' parental rights. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, 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.¹ If substantial evidence in the record supports the district court's determination that clear and convincing evidence warrants termination, this court will uphold the termination order.²

In the present case, the district court determined that it was in the children's best interests that appellants' parental rights be terminated. Specifically, the district court found that since the children

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

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

had been in foster care for fourteen months of any twenty consecutive months, there was a presumption that termination was in their best interests.³ Appellants contended that it was not in the children's best interests to terminate their parental rights, as the children had bonded with them and since there was no adoptive home presently identified for the children, the children would be legal orphans if the termination petition was granted. The district court concluded that the appellants' contentions failed to rebut NRS 128.109(2)'s presumption. Substantial evidence supports the district court's determination that the children's best interests would be served by terminating the appellants' parental rights.

With regard to parental fault, the record shows that in the abuse and neglect proceeding, a juvenile master recommended that respondent be relieved of providing additional reasonable efforts towards reunification, as the children had been removed from the appellants' home previously and adjudicated abused and neglected, then returned home, only to be removed again.

Under NRS 432B.393(3)(d), an agency must make reasonable efforts to preserve and reunify a family unless the district court finds that "[t]he child or a sibling of the child was previously removed from his home, adjudicated to have been abused or neglected, returned to his home and subsequently removed from his home as a result of additional abuse or neglect." The master concluded that based on appellants' neglect, one child was seriously injured while riding his bicycle, unsupervised, and was

³NRS 128.109(2).

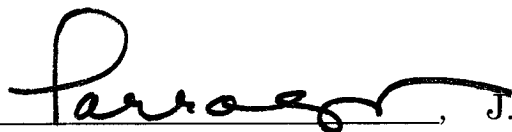
hit by a car in 1996. The children were taken into protective custody, appellants were provided extensive services and the children were returned home, only to have another of appellants' children found twice in 2004 riding his bicycle in the streets unsupervised. In 2004, the children were again taken into protective custody. Appellants did not timely object to the master's recommendation regarding its findings under NRS 432B.393(3)(d), and subsequently, the district court entered an order affirming and adopting the master's recommendation and findings.


In the termination proceeding, respondent moved the district court to determine parental fault based on the district court's order, in the abuse and neglect proceedings, affirming and adopting the master's recommendation and findings under NRS 432B.393(3)(d). Under NRS 128.105, in addition to finding that termination is in a child's best interest, parental fault may be established by "[t]he conduct of the parent or parents [that] was the basis for a finding made pursuant to subsection 3 of NRS 432B.393."⁴ In response to respondent's motion to determine parental fault, appellants each filed, through their respective counsel, a waiver regarding parental fault. Both parents agreed that parental fault was established and that the only issue for the district court's consideration was the children's best interests. Subsequently, the district court entered an order granting respondent's motion regarding parental fault. Ultimately, appellants' parental rights were terminated and they appeal.

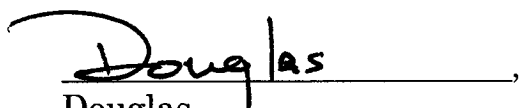
⁴NRS 128.105(2).

On appeal, appellants contend, in their civil appeal statement, that they did not knowingly waive their right for respondent to prove parental fault by clear and convincing evidence. Regardless of appellants' contention, we conclude that when a district court makes a finding based on the parent's conduct under the abuse and neglect statute, NRS 432B.393(3), that reunification is no longer required, parental fault is established under the termination of parental rights statute, NRS 128.105(2), as a matter of law. Accordingly, substantial evidence supports the district court's conclusion that termination of appellants' parental rights was warranted, and we affirm the district court's order.

It is so ORDERED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Douglas

cc: Hon. Deborah Schumacher, District Judge, Family Court Division
Cynthia R.
Robert R.
Washoe County District Attorney Richard A. Gammick/Civil
Division
Washoe District Court Clerk