IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO M. J. C. W.

CYNTHIA N.,
Appellant,
vs.
THE STATE OF NEVADA DEPARTMENT OF FAMILY SERVICES,
Respondent.

No. 47662

FILED

MAR 09 2007

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

ORDER OF AFFIRMANCE

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

Appellant contends that the district court abused its discretion when it concluded that parental fault was established warranting termination and that the court erred when it failed to take into account the child's desires concerning the possible termination.

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

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

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convincing evidence warrants termination, this court will uphold the termination order.[2]

In the present case, the district court determined that it is in the child's best interest that appellant's parental rights be terminated. The district court also found by clear and convincing evidence appellant's failure of parental adjustment and only token efforts.

Failure of parental adjustment occurs when a parent is unable, within a reasonable time, to correct the conduct that led to the child being placed outside the home.[3] Failure of parental adjustment is established when a parent fails to comply with the case plan to reunite the family within six months after the child has been placed outside the home.[4] Here, the district court found by clear and convincing evidence that appellant had, through her own fault and habit, failed to provide care for the child. Moreover, the court found that the appellant had an approximate two-year opportunity to address her substance abuse, but that appellant failed to substantially comply with her case plan.

With respect to token efforts, under NRS 128.109(2), if a child has been in foster care for fourteen months of a twenty-month period, 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.[5] Here, while the district court recognized appellant's ongoing struggle to overcome her

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

[3]NRS 128.0126.

[4]NRS 128.109(1)(b).

[5]NRS 128.105(2)(f).

addictions, the court opined that the "child deserves an opportunity for stability and permanency." Thus, the district court concluded that the appellant did not overcome the presumption as to token efforts.

Finally, with regard to the child's desire concerning the termination,[6] once the presumption set forth under NRS 128.109(2) applies in a termination proceeding, the parent has the burden to offer evidence that the child does not wish for his parent's parental rights to be terminated.[7] Here, appellant did not offer evidence regarding the child's desires, although she did argue during closing argument that the child, at the age of eight, had the capacity to testify as to his desires.

We have considered the parties' briefs and reviewed the record, and we conclude that substantial evidence supports the district court's determination that respondent established by clear and convincing evidence that termination was warranted. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Gibbons

_____, J.
Douglas

_____, J.
Cherry

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[6]NRS 128.107(2) (providing that in a termination of parental rights proceeding, if a child is not in the physical custody of the parent the court must consider the child's desires regarding the termination).

[7]Matter of Parental Rights as to A.J.G., 122 Nev. __, __, 148 P.3d 759, 765 (2006).

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