IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO S.M. AND N.M.

MARIE M.,
Appellant,
vs.
CLARK COUNTY DEPARTMENT OF FAMILY SERVICES,
Respondent.

No. 48042

FILED

MAY 30 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 children. Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, Judge.

Appellant raised two main issues on appeal: (1) appellant contends that the County did not establish by clear and convincing evidence that the termination of the appellant's parental rights was in the children's best interests and that parental fault existed; and, (2) appellant contends the district court abused its discretion by placing the children in foster care, rather than with their maternal great aunt.

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] Here, the district court determined that it is in the children's best interests that appellant's parental rights be terminated. The district court also found by clear and convincing evidence appellant's unfitness, failure of parental adjustment, and only token efforts to prevent neglect and to avoid being an unfit parent.

I. Children's best interests and parental fault

As for parental fault, appellant contends that she overcame the presumption set forth in NRS 128.109(2). NRS 128.109(2) provides that if a child has been in foster care for more than fourteen months in any consecutive twenty month period, it is presumed the best interests of the child are found by terminating parental rights. Under NRS 128.109(1)(a), if a child has been in foster care for more than fourteen months, it is presumed that the parent has made only token efforts to care for the child and termination is in the child's best interest. As for unfitness,[3] when determining whether a parent is unfit, the district court must consider a parent's "[e]xcessive use of intoxicating liquors, controlled substances or dangerous drugs[,] which renders the parent consistently unable to care for the child."[4] Failure of parental adjustment[5] occurs when a parent is unable or unwilling, within a reasonable time, to substantially

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

[3]NRS 128.105(2)(c).

[4]NRS 128.106(4).

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

correct the conduct that led to the child being placed outside the home.[6] Evidence of failure of parental adjustment is established by the parent's failure to comply with the case plan to reunite the family within six months after the child has been placed outside the home.[7] Here, the district court found that appellant failed within a reasonable time to correct, substantially, the circumstances, conduct or conditions which led to the children's placement in foster care. The children were placed into foster care January 5, 2005, and the district court heard testimony on July 3, 2006. The children were in foster care for eighteen consecutive months, exceeding the fourteen months required under NRS 128.109(2) to invoke the presumption therein. We conclude that appellant failed to rebut the presumption under NRS 128.109(2).

The record shows that appellant has a history of untreated drug abuse. Appellant did not comply with her case plan in that (1) appellant did not follow through with any efforts to enter a drug rehabilitation program and refused to submit to random drug testing, (2) appellant refused to pursue counseling to address her depression issues, and (3) appellant failed to pursue efforts at private employment or public income to demonstrate how she would be able to support the children if they returned to her care. Appellant has maintained a stable residence. Appellant has also continued visitation with the children on a weekly basis and appears emotionally attached to them. Even so, we conclude

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[6]NRS 128.0126.

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

that substantial evidence supports the district court's determination that termination was warranted, and we affirm the district court's order.

II. Foster care placement

Appellant contends the district court abused its discretion when it placed the children in foster care, rather than placing them in the custody of their maternal great aunt. Under NRS 128.110(2)(b), states "if practicable, [preference shall be given] to the placement of the child together with his siblings."[8] Moreover, NRS 432B.553 provides that a "[p]reference must be given to placing the child with any person related within the third degree of consanguinity. . . ." Thus, the district court must involve, notify, and allow recommendations from a person of special interest to a child's placement plan.[9] Additionally, a person of special interest must be allowed to testify at any hearing regarding placement of the child.[10]

Here, the record shows that an attempt was made to place the children with appellant's mother and the children's five siblings.[11] As to placement with the maternal great aunt, the district court found that the aunt falls outside of the third degree of consanguinity and, therefore, is not considered a person with preferential familiar preference according to

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[8]NRS 432B.550(5)(a) provides "[i]t must be presumed to be in the best interest of the child to be placed together with his siblings."

[9]NRS 432B.457(1)

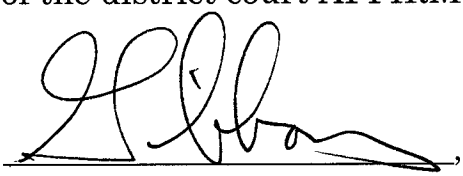
[10]NRS 432B.457(1).

[11]Appellant's parental rights were terminated as to her other children in a California proceeding.

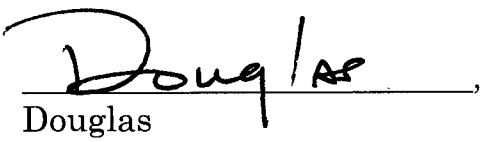
NRS 432B.550(B). Thus, no preferential placement of the children with the aunt was warranted.

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

ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



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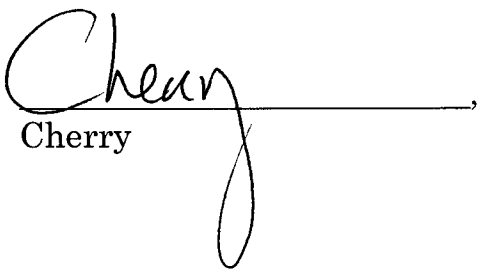
Douglas



_____, J.
Cherry

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