IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO BABY GIRL T., A/K/A A.F.

ELIZABETH T.,
Appellant,
vs.
CLARK COUNTY DEPARTMENT OF FAMILY SERVICES,
Respondent.

No. 48182

FILED

JAN 11 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order terminating appellant's parental rights. Eighth Judicial District Court, Family Court Division, Clark County; Gerald W. Hardcastle, 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

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

07-00767

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 unfitness and failure of parental adjustment.

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] and the repeated and/or continuous parental failure to provide for the child's basic needs.[5] Failure of parental adjustment[6] 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 the home.[7]

Here, the record shows that the child was exposed to drugs in utero and placed into protective custody. Appellant admits that she smoked cocaine two days before the child's birth. The record also reveals

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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 128.106(5).

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

[7]NRS 128.0126.

that appellant did not comply with her case plan in that, among other things, she did not submit to a drug assessment and she did not provide any documentation to support her assertion that she had participated in a twelve step program. Appellant contends that she frequently requested visitation with the child, but the record does not support this contention. To the contrary, the record shows that appellant never visited the child and lost contact with her caseworker when appellant was not incarcerated.

Appellant contends, among other things, that she was unable to comply with her case plan because she was incarcerated and did not receive support from her caseworkers. While the district court considered appellant's incarceration,[8] it concluded that appellant's "chronic history of failing to care for her children" and her drug problem has resulted in her continued instability and inability to care for her children.

The child has been placed with a foster family, who has adopted her half-sibling and has expressed an interest in adopting the child.

We have considered appellant's civil appeal statement, her filed documents and reviewed the record, and we conclude that substantial

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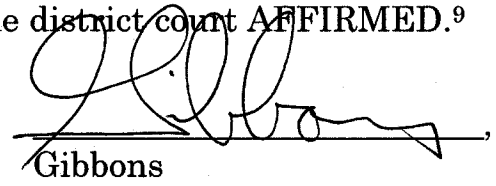
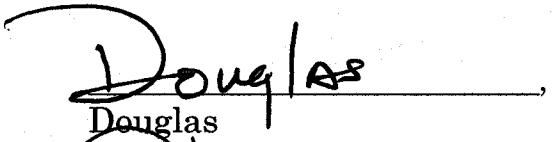
[8]See Matter of Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002) (observing that a district court must consider a parent's incarceration in determining whether termination is proper); see also Matter of Parental Rights as to K.D.L., 118 Nev. 737, 58 P.3d 181 (2002) (noting that incarceration alone does not establish parental fault as a matter of law).

evidence supports the district court's determination that respondent established by clear and convincing evidence that termination was warranted. Accordingly, we

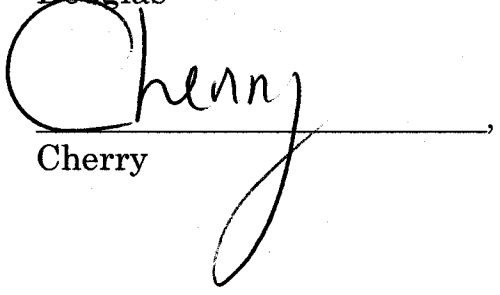
ORDER the judgment of the district court AFFIRMED.[9]



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

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[9]Appellant has failed to pay the filing fee required by NRS 2.250(1)(a) and NRAP 3(f); in response to our notice to pay the fee, she submitted an affidavit in support of her request to proceed in forma pauperis. Under NRAP 24(a), such a request must first be presented to the district court, and so appellant's request is improper. We note that failure to pay the filing fee or to properly obtain in forma pauperis status could constitute a basis for dismissing this appeal. We deny appellant's October 18, 2006 motion for the appointment of counsel, see NRS 128.100, and her request for transcripts at state expense, as transcripts are not necessary for resolving this appeal. Additionally, on January 3, 2007, appellant filed a letter in this court with attached documents. This court cannot consider on appeal matters not properly appearing in the district court record and, thus, we will only consider those documents that were properly before the district court. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981).

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Elizabeth A. T.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger/Juvenile Division
Clark County Clerk