IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO: A.S., A.C., I.C., AND K.R.

CHRISTOPHER C.,
Appellant,
vs.
STATE OF NEVADA DEPARTMENT OF FAMILY SERVICES,
Respondent.

No. 48357

FILED

AUG 17 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an 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] This court will uphold a district court's termination order if substantial evidence supports the decision.[2] Here, the district court found that is was in the children's best interests to terminate appellant's parental rights. The district court further found by

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

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

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clear and convincing evidence that appellant is an unsuitable parent on the basis of abandonment.[3]

On appeal, appellant contends that substantial evidence does not support the district court's termination order for three reasons: (1) appellant provided sufficient evidence, during the termination hearing, to overcome the abandonment presumption by demonstrating that he did not intend to abandon the children; (2) the district court erroneously relied on appellant's incarceration to support its finding of parental fault; and (3) respondent did not devise a case plan for appellant.

With respect to abandonment, under NRS 128.012(1), the term "abandonment of a child" is defined as "any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child." Intent is the decisive factor in abandonment and may be shown by the facts and circumstances.[4] The statute also creates a presumption of abandonment when "a parent . . . leave[s] the child in the care and custody

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[3]Appellant contends that the district court also found parental fault on the basis of token efforts, but the termination order only expressly found abandonment. See NRS 128.105(2) (recognizing that the district court need only find one parental fault factor in order to terminate a parent's parental rights). Thus, we do not consider appellant's arguments in his opening brief as they relate to token efforts.

[4]Smith v. Smith, 102 Nev. 263, 266, 720 P.2d 1219, 1221 (1986), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).

of another without provision for his support and without communication for a period of 6 months."[5] This abandonment presumption is mandatory.[6]

Here, the district court found that appellant had failed to overcome the statute's abandonment presumption, as appellant had left the children in the care and custody of the children's maternal grandmother without provision for their support and without communication for a period of five years.[7] Moreover, the court did not find appellant's testimony, that his family members provided contact and/or gifts to the children on his behalf, credible. It is the role of the fact finder to judge credibility of witnesses, and consequently, this court will not substitute its own evaluation of the evidence for that of the district court when the district court had an opportunity to hear the witnesses and evaluate their demeanor.[8]

Regarding incarceration, a district court must consider a parent's incarceration in determining whether termination is proper.[9] The mere fact of incarceration, however, does not establish parental fault.[10]

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[5]NRS 128.012(2).

[6]See Matter of N.J., 116 Nev. at 804, 8 P.3d at 135.

[7]See DeLee v. Roggen, 111 Nev. 1453, 907 P.2d 168 (1995) (recognizing that a district court's findings will not be disturbed unless they are clearly erroneous and not based on substantial evidence).

[8]See Kobinski v. State, 103 Nev. 293, 738 P.2d 895 (1987).

[9]Matter of Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002).

[10]Matter of K.D.L., 118 Nev. 737, 58 P.3d 181.

This court has explained that "[w]hen considering a parent's incarceration in termination proceedings, the district court must consider the nature of the crime, the sentence imposed, who the crime was committed upon, the parent's conduct toward the child before and during incarceration, and the child's specific needs."[11] Here, the district court considered appellant's incarceration and the crime he committed, and his criminal history, and found that termination was warranted not based on these considerations, but rather because appellant had abandoned the children.[12]

Finally, as to whether respondent was obligated to provide appellant with a case plan and any additional information regarding preserving appellant's parental rights, this court has recognized that the Department of Family Services (DCFS) is not required to provide a parent with a case plan, when the parent has shown little interest in the child.[13] Moreover, due process is satisfied when DCFS informs a parent of necessary procedures to preserve his or her parental rights.[14] Here, the district court concluded that respondent was not under any obligation to devise a case plan for appellant or provide him any additional information, as respondent did not know appellant's whereabouts. The district court explained that appellant did not maintain any contact with the children

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[11]Matter of J.L.N., 118 Nev. at 628, 55 P.3d at 960.

[12]See NRS 128.105(2) (providing that only one basis for parental fault must be established to support the termination of parental rights).

[13]See Matter of Parental Rights as to C.J.M., 118 Nev. 724, 735, 58 P.3d 188, 195-96 (2002).

[14]Id.

and, although appellant knew that the children had been placed into protective custody while he was incarcerated in Texas, he never contacted respondent regarding the children until July 2005, three months after he was released from prison, and one month after the petition to terminate his parental rights was filed.

Having reviewed the record and considered the parties' briefs, we conclude that substantial evidence supports the district court's order granting respondent's petition to terminate appellant's parental rights. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[15]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

[15]Pursuant to NRAP 34(f), we have determined that oral argument is not warranted in this case.

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