

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO D.R.S. AND X.D.K.

No. 48782

JEREME R. S.,

Appellant,

vs.

THE STATE OF NEVADA DIVISION  
OF CHILD AND FAMILY SERVICES,  
DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES,

Respondent.

**FILED**

SEP 10 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating appellant's parental rights as to the minor child.<sup>1</sup> Fifth Judicial District Court, Mineral County; John P. Davis, 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.<sup>2</sup> This court will uphold a district court's termination order if substantial evidence supports the decision.<sup>3</sup> In the present case, the district court determined that it is in the child's best

<sup>1</sup>As appellant is not X.D.K.'s father, he only challenges the portion of the district court order that terminates his parental rights as to D.R.S.

<sup>2</sup>See Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004); NRS 128.105.

<sup>3</sup>Matter of D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

interest that appellant's parental rights be terminated. The district court also found by clear and convincing evidence appellant's unfitness.

On appeal, appellant contends that he was not given a fair opportunity to complete his case plan and/or comply with other requests made by respondent because he was incarcerated, and thus, respondent did not prove parental unfitness by clear and convincing evidence. Respondent counters that appellant was given ample opportunity to complete his case plan, that he understood what was expected of him under the case plan, and that appellant failed to provide any documentation to establish that he even attempted to comply with the case plan. Also, respondent contends that the district court properly considered appellant's criminal history when weighing whether to terminate appellant's parental rights.

A parent is unfit when, by his or her own fault, habit, or conduct toward the child, the parent fails to provide the child with proper care, guidance, and support.<sup>4</sup> Moreover, a district court must consider a parent's incarceration in determining whether termination is proper.<sup>5</sup> Incarceration alone, however, does not establish parental fault as a matter of law.<sup>6</sup>

Here, the district court did not rely solely on appellant's incarceration when determining whether to terminate appellant's parental

---

<sup>4</sup>NRS 128.105(2)(c); NRS 128.018.

<sup>5</sup>Matter of Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002).

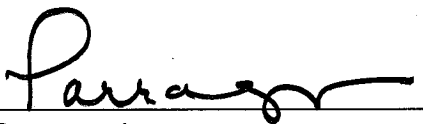
<sup>6</sup>Id. at 628, 55 P.3d at 959-60.

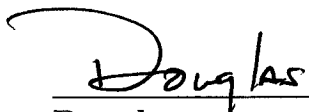
rights, but considered his extensive criminal history and his violent acts towards the child's mother, as well as appellant's failure to comply with his case plan. Further, the record shows that the district court considered the fact, and appellant conceded the point when he testified during the termination hearing, that he made little effort to stay in contact with the child after the child was placed into protective custody.

We have considered the parties' briefs and reviewed the record, and 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.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. John P. Davis, District Judge  
David H. Neely III  
Attorney General Catherine Cortez Masto/Carson City  
Mineral County Clerk