

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO J.P.C.

No. 49030

JOHN P.C.,

Appellant,

vs.

STATE OF NEVADA DEPARTMENT
OF FAMILY SERVICES,

Respondent.

FILED

OCT 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *[Signature]*
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.

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 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.

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

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

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. Respondent also contends that the district court properly considered appellant's criminal history when determining whether to terminate appellant's parental rights.

With regard to appellant's case plan, the district court expressed its frustration that respondent failed to provide appellant with a case plan until late in the termination proceedings. Accordingly, the court rejected respondent's contention that failure of parental adjustment and only token efforts were established by clear and convincing evidence on the ground that appellant did not comply with his case plan. Nevertheless, the district court found parental fault on the basis of unfitness.³

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

³See NRS 128.105(2) (providing that only one parental fault factor must be established to warrant termination).

care, guidance, and support.⁴ When determining whether a parent is unfit, the district court must consider a parent's repeated and/or continuous failure to provide for the child's basic needs.⁵ Moreover, a district court must consider a parent's incarceration in determining whether termination is proper.⁶ Incarceration alone, however, does not establish parental fault as a matter of law.⁷

Here, the record shows that the district court did not rely solely on appellant's incarceration when determining whether to terminate his parental rights. Instead, the court found that while the child was in foster care, and appellant could have focused his efforts on reunification, appellant was continually involved in behavior that ultimately resulted in his incarceration. Further, the record shows that the district court considered the fact, conceded by appellant, that appellant did not provide the child with any money, support or gifts after the child was placed into protective custody.

We have considered the parties' briefs and have reviewed the record, and we conclude that substantial evidence supports the district

⁴NRS 128.105(2)(c); NRS 128.018.

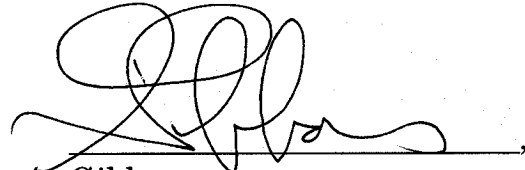
⁵NRS 128.106(5).

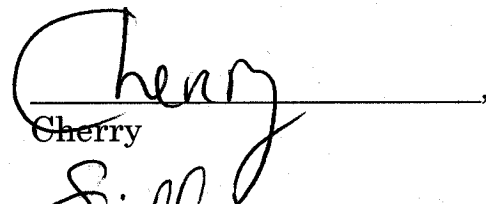
⁶Matter of Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002).

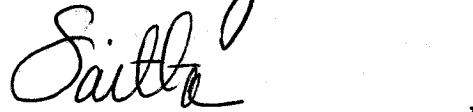
⁷Matter of J.L.N., 118 at 628, 55 P.3d at 959-60.

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.
Cherry


_____, J.
Saitta

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