IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO M.C.B.

CATHLEEN S.,
Appellant,
vs.
MICHAEL J. B.,
Respondent.

No. 49744

FILED

MAY 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to set aside an order terminating parental rights. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

In the underlying district court case, the district court entered an order terminating respondent's parental rights as to the minor child M.C.B., concluding that respondent abandoned the minor child and that the termination of respondent's parental right was in the best interest of the minor child.[1] Neither appellant nor respondent appealed from the order of termination.

[1]NRS 128.105; Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004) (stating that "to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the child's best interest and that one of the enumerated parental fault factors set forth in NRS 128.105(2) exists").

More than two years later, appellant moved the district court under NRCP 60(b) to set aside the termination of parental right's order. Appellant argued that after respondent consented to adoption and relinquished his parental rights, appellant only intended to have respondent's parental rights terminated in anticipation of her then-husband's desire to adopt the minor child. Appellant further argued that since that adoption never took place, the district court was required to set aside its order terminating respondent's parental rights as void. The district court denied appellant's NRCP 60 (b) motion, denied her motion for reconsideration,[2] and appellant has appealed to this court.

The district court has discretion to decide NRCP 60(b) motions, and we will not disturb the district court's decision absent an abuse of discretion.[3] After reviewing appellant's opening brief and appendix, we conclude that the district court did not abuse its discretion when it denied appellant's motion to set aside the order terminating respondent's parental rights. The district court terminated respondent's parental right under NRS 128.105 after it found, by clear and convincing evidence, that respondent had abandoned the child and that the termination was in the child's best interest. Although the adoption process was not completed, the district court's findings of abandonment and the child's best interest under NRS 128.105 remain unchanged. Thus,

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[2]See NRAP 3A(b); Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (recognizing that an order denying a motion for reconsideration is not substantively appealable).

[3]Carlson v. Carlson, 108 Nev. 358, 361, 832 P.2d 380, 382 (1992).

as the district court did not abuse its discretion when it denied appellant's NRCP 60(b) motion, we

ORDER the district court's order AFFIRMED.

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. William S. Potter, District Judge, Family Court Division
Stephanie M. Keels
Michael J. B.
Eighth District Court Clerk