


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PARENTAL
RIGHTS OF FRANK S. B. AND LYNN
C. R.

No. 50232

FILED

JAN 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

FRANK S. B.,
Appellant,
vs.
GRETCHEN J. W.,
Respondent.

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order terminating appellant's parental rights. Third Judicial District Court, Lyon County; David A. Huff, Judge.

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 termination of appellant's parental rights was in the children's best interest. The district court also found by clear and convincing evidence that appellant was an unfit parent, that he had abandoned his children, that his efforts to maintain

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.

communication with his children were merely token, and that the children could be exposed to risk of injury if returned to appellant's custody.

A parent is unfit when, by his own fault, habit, or conduct toward the children, he fails to provide the children with proper care, guidance, and support.³ In determining unfitness, the district court considers, among other factors, the parent's (1) abusive conduct toward the children, (2) excessive use of alcohol or drugs, which renders the parent unable to adequately care for the children, and (3) felony conviction, if the facts of the crime are of such a nature as to indicate the parent's unfitness to adequately provide for the children's care.⁴ Parental fault may be established when a parent makes only token efforts to support or communicate with the child.⁵ Although the district court must consider a parent's incarceration in determining whether termination is proper, incarceration alone does not establish parental fault as a matter of law.⁶ Under NRS 128.109(2), if children have been placed outside of the parent's care for fourteen of any twenty consecutive months, it is presumed that termination is in the children's best interest.

Children are considered abandoned when the parent's conduct evinces a settled purpose to forego all parental custody and relinquish all

³NRS 128.018; NRS 128.105(2)(c).

⁴NRS 128.106;

⁵NRS 128.105(2)(f)(1).

⁶Matter of Parental Rights as to J.L.N., 118 Nev. 621, 627-28, 55 P.3d 955, 959-60 (2002).

claims to the children.⁷ Although abandonment is presumed when a parent leaves his children in the care and custody of another without provision for the children's support and without communication for a period of six months or more,⁸ whether a parent has abandoned his children is a fact-specific determination.⁹ In evaluating an abandonment finding, this court has explained that although the fact that a parent contests a termination may indicate that the parent does not have a "settled purpose . . . to forego all parental custody and relinquish all claims to the child,' . . . the trial court is not obligated to accord greater weight to the parent's belated protestations than to the parent's failure to provide support and communicate with the child."¹⁰

Here, the district court did not rely solely on appellant's incarceration when determining that termination of appellant's parental rights was in the children's best interest, but the court also considered appellant's previous violent acts towards the petitioner and the children, including taking the petitioner and the children hostage, as well as

⁷NRS 128.012(1).

⁸NRS 128.012(2).

⁹See Pyborn v. Quatham, 96 Nev. 145, 605 P.2d 1147 (1980) (upholding a district court's order terminating a father's parental rights, based in part on the court's finding that, contrary to the father's claims that the mother had frustrated the father's attempts to communicate with the child, the father had abandoned the child as evidenced by the fact that he made no real attempts to communicate with his child for a ten-month period and failed or made only token efforts to pay child support).

¹⁰Greeson v. Barnes, 111 Nev. 1198, 1204, 900 P.2d 943, 947 (1995) (quoting NRS 128.012(1)).

appellant's conduct while in custody, which included threats of violence against the petitioner. In determining unfitness, the district court considered appellant's repeated incidents of domestic violence and his drug and alcohol abuse issues before he was incarcerated, which the court noted had rendered appellant unable to provide adequate care for the children and at times endangered their welfare. Further, the record shows that, in determining appellant's intent to abandon the children, the district court considered the fact that appellant had made little effort to stay in contact with the children for over three years, largely due to the fact that he had threatened violence against the petitioner, causing her to obtain a protective order that necessarily suspended appellant's contact with the children.

Having reviewed the record,¹¹ we conclude that substantial evidence supports the district court's order terminating appellant's

¹¹On September 25, 2007, a civil proper person appeal statement and other documents were mailed to appellant as part of the pilot program for proper person civil appeals. See ADKT No. 385 (Order Establishing Pilot Program in Civil Appeals, June 10, 2005). See also ADKT No. 385 (Order Extending Pilot Program for Civil Proper Person Appeals, May 10, 2006) (extending the pilot program for civil appeals until further order of this court). Although appellant's appeal statement was due by November 5, 2007, see ADKT. No. 385, Exhibit A (Instructions for Civil Litigants without Attorneys (explaining that the appeal statement must be filed in this court within forty days after an appeal is filed)), appellant has not filed his civil appeal statement or otherwise responded to this court's directive. His failure to file the civil appeal statement is a ground for dismissing this appeal; however, given the important rights at stake here, we nevertheless have considered the appeal's merits and reviewed the record to determine whether substantial evidence supports the district court's decision. See Dagher v. Dagher, 103 Nev. 26, 28, 731 P.2d 1329, 1330 (1987) (explaining that judicial policy favoring a decision on the
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parental rights. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Maupin, J.

Maupin

Cherry, J.

Cherry

Saitta, J.

Saitta

cc: Hon. David A. Huff, District Judge
Frank S. B.
Attorney General Catherine Cortez Masto/Carson City
Law Offices of John P. Schlegelmilch, Ltd.
Lyon County Clerk

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merits is heightened in domestic relations matters); Matter of Parental Rights as to Carron, 114 Nev. 370, 956 P.2d 785 (1998) (explaining that when a district court order terminating parental rights is appealed, this court closely scrutinizes the district court's decision), overruled on other grounds by Matter of Parental Rights as to N.J., 116, Nev. 790, 8 P.3d 126 (2000).