

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO A.R., A MINOR

No. 51668

NOEL M. F/K/A NOEL R.,
Appellant,
vs.
LUCAS R.,
Respondent.

FILED

JUN 30 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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; T. Arthur Ritchie Jr., Judge.

In April 2007, respondent Lucas R., the minor child's natural father, petitioned the district court to terminate appellant Noel's parental rights. The district court granted Lucas' petition, finding that Lucas had presented clear and convincing evidence that the child's best interest was served by terminating Noel's parental rights and that parental fault existed.

On appeal, Noel argues that the district court abused its discretion when it terminated her parental rights.¹ Having considered

¹On appeal, Noel additionally argues that (1) she was prejudiced by ineffective assistance of counsel, (2) her due process rights were violated because the district court did not sua sponte appoint competent counsel, and (3) the decision in this case should have been consistent with the decision in her parental rights termination case as to her other son. These arguments are all without merit. First, as Noel concedes in her brief, the issue of ineffective assistance of counsel cannot alone give rise to reversing

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Noel's contentions in light of the record, we conclude that substantial evidence supports the district court's order terminating her parental rights. Therefore, we affirm. Because the parties are familiar with the facts of this case, we do not recount them except as necessary to our disposition.

DISCUSSION

In termination of parental rights cases, the petitioner must prove by "clear and convincing evidence that (1) termination is in the child's best interest, and (2) parental fault exists." Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1423, 148 P.3d 759, 762 (2006); NRS 128.105. On appeal, this court reviews the district court's "factual findings in its order terminating parental rights for substantial evidence, and we will not substitute our own judgment for that of the district court." Matter of Parental Rights as to A.J.G., 122 Nev. at 1423, 148 P.3d at 763.

For the following reasons, we conclude that substantial evidence supports the district court's order terminating Noel's parental rights. Specifically, we conclude that substantial evidence supports the

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the district court's decision. See Matter of Parental Rights as to N.D.O., 121 Nev. 379, 382-84, 115 P.3d 223, 225 (2005) (noting that in termination of parental rights cases there is no absolute right to counsel). Second, for the same reason, the district court had no duty to sua sponte appoint new counsel. Last, there is no law that supports Noel's contention that the outcome of this case should mirror the outcome of her termination-of-parental-rights case as to her other son. Therefore, we conclude that none of these arguments have merit.

district court's finding that terminating Noel's parental rights was in the child's best interest and that there was parental fault.

Child's best interest

When considering the child's best interest, the district court found that Noel had not maintained a relationship with the child. The district court based its finding on the fact that Noel had not contacted or supported the child since September 2006 despite: (1) living in Clark County, (2) a court order permitting supervised visitation, and (3) a court order requiring her to pay child support. Further, the district court considered that Lucas had established a stable home for the child and that preserving Noel's parental rights would be "detrimental to [the child's] continuing physical, mental, and emotional needs, and would threaten to injure [the child's] emotional growth and development." The district court acknowledged that Noel had stopped using methamphetamine and had completed drug court. Nonetheless, it concluded that the interest of maintaining the child in a stable home outweighed the upheaval of reuniting him with Noel.

Noel argues that the district court abused its discretion when it concluded that it would be in the child's best interest to terminate her parental rights. Noel claims that she: (1) had a strong bond with the child and was a good mother, (2) was unable to take advantage of the court-ordered supervised visitation, (3) had an extended protective order that prevented her from contacting the child, and (4) provided health insurance for the child upon becoming employed. We disagree with Noel's contentions.

In termination-of-parental-rights cases, the primary concern is whether termination of parental rights is in the child's best interest. NRS

128.105. In determining whether the child's best interest would be served by terminating parental rights, the district court should look at the child's continuing need for "proper physical, mental and emotional growth and development," NRS 128.005(2)(c), and "consider each matter on a case-by-case basis." Matter of Parental Rights as to Q.L.R., 118 Nev. 602, 607, 54 P.3d 56, 59 (2002).

Here, the record reveals that Noel did not pay child support despite a September 2006 order requiring her to do so. The record further shows that Noel did not attempt to contact her child until nearly one year after the district court granted Lucas custody. We conclude that this evidence is substantial, especially when coupled with the evidence that Lucas has created a stable home for the child. A reasonable person could rely on it to conclude that the child's best interest would be served by terminating Noel's parental rights. Therefore, we conclude that Noel's argument on this point fails.

Parental fault

The district court concluded that parental fault existed because Noel (1) had abandoned the child; (2) was an unfit parent; and (3) presented a serious risk of physical, mental, or emotional harm to the child. After discussing the general law concerning parental fault, we review each of the district court's findings in turn and conclude that the district court did not abuse its discretion.

Pursuant to NRS 128.105(2), parental fault exists if at least one of the following is proven:

- (a) Abandonment of the child;
- (b) Neglect of the child;
- (c) Unfitness of the parent;
- (d) Failure of parental adjustment;

(e) Risk of serious physical, mental or emotional injury to the child if he were returned to, or remain[ed] in, the home of his parent or parents;

(f) Only token efforts by the parent or parents:

(1) To support or communicate with the child;

(2) To prevent neglect of the child;

(3) To avoid being an unfit parent;

or

(4) To eliminate the risk of serious physical, mental or emotional injury to the child;
or

(g) With respect to termination of the parental rights of one parent, the abandonment by that parent.

Abandonment

The district court found that Noel had abandoned the child financially and emotionally by failing to contact or support him. The district court noted that abandonment is presumed pursuant to NRS 128.012 because Noel did not contact the child for more than one year and did not paid child support for more than one year. Further, the district court noted that the evidence indicated that Noel intentionally abandoned the child since she made "little or no effort" to contact or support the child between September 2006 and January 2008. Finally, the district court noted that Noel had not paid child support since September 2006, despite working two jobs at the pertinent time.

Noel objects to the district court finding that she abandoned the child, arguing that she did not have the specific intent to abandon him.

“Intent is the decisive factor in [deciding] abandonment and may be shown by the facts and circumstances.” Matter of Parental Rights of Montgomery, 112 Nev. 719, 727, 917 P.2d 949, 955 (1996), superseded by statute on other grounds as recognized in Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000). However, as the district court in this case noted, a presumption of abandonment arises when a parent fails to support or contact her child for six months. NRS 128.012(2); Matter of Parental Rights as to C.J.M., 118 Nev. 724, 734, 58 P.3d 188, 195 (2002).

The district court’s conclusion that Noel abandoned the child is supported by the evidence that she failed to contact or support him for more than one year. Moreover, a parent abandons her child if her conduct “evinces a settled purpose . . . to forego all parental custody and relinquish all claims to the child.” NRS 128.012(1). Thus, the fact that since September 2006 Noel made essentially no effort to contact the child and did not pay child support, despite being employed at the time of trial, supports the district court’s decision. Therefore, because there is substantial evidence by which a reasonable person could conclude that Noel abandoned the child, we conclude that Noel’s argument on this point fails.

Unfit parent

The district court found that Lucas presented clear and convincing evidence that Noel was an unfit parent because she was convicted of concealment of a child as to her other son. The district court noted that the nature of the concealment crime, as well as Noel’s subsequent response to the conviction, indicated that Noel was an unfit parent. The district court also found that Noel was an unfit parent because she had committed an act of domestic violence in the child’s

presence. The district court noted that Lucas presented evidence that the domestic violence incident adversely affected the child and that Noel had a history of anger issues and domestic violence. Finally, the district court noted the evidence of Noel's history of methamphetamine use.

Noel contends that she is not an unfit parent. Noel asserts that (1) she had no plans to abduct the child in question, so her conviction of concealment of a child as to her other son was immaterial to determining whether she was an unfit parent; (2) she only committed domestic violence in front of the child once; (3) she no longer has a substance abuse problem; and (4) the district court improperly relied on witnesses' testimony that she had a history with anger issues and domestic violence. We disagree with Noel's contentions and conclude that substantial evidence supports the district court's conclusion that she is an unfit parent.

Pursuant to NRS 128.018, an unfit parent is one "who, by reason of his fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support." Here, the district court's decision is supported by substantial evidence. First, one indication of parental unfitness is a felony conviction when "the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development." NRS 128.106(6).

The district court's finding that Noel was an unfit parent is supported by her conviction for concealment of a child as to her other son. While the conviction concerned her other son, we conclude that the district court did not abuse its discretion when it found that the nature of the crime showed her inability to care for the child in this case. By secreting

her other son out of the state, Noel demonstrated a lack of good judgment. Next, the evidence that Noel committed an act of domestic violence in front of the child supports the district court's conclusion that she was an unfit parent. See Matter of Parental Rights as to D.R.H., 120 Nev. 422, 429-30, 92 P.3d 1230, 1235 (2004) (noting that the parents were unfit, in part because the father was incarcerated for domestic violence, despite a case plan tailored to meet his anger management and domestic violence problems, and because the children had witnessed domestic violence incidents and begun acting like their parents). Last, excessive use of a controlled substance such that it "renders the parent consistently unable to care for the child" may indicate parental unfitness, NRS 128.106(4), and Noel has a history of using methamphetamine. Based on this evidence, we conclude that the district court did not arbitrarily and capriciously decide that Noel was an unfit parent. Rather, there was substantial evidence to support this conclusion.

Risk for serious physical, mental, or emotional injury

The district court concluded that Noel presented an unacceptable risk of serious physical, mental, or emotional injury to the child. Specifically, the district court noted that Noel associated with individuals who posed a threat of harm to the child. The district court found Noel's assertions to the contrary to be lacking credibility. The district court also found that while injuries sustained by the child while in Noel's care were not the result of abuse or neglect, they indicated "poor judgment" that created a significant risk to the child's welfare.

Noel challenges the district court's conclusion that she presented an unacceptable risk of serious physical, mental, or emotional

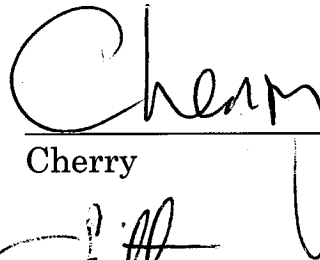
injury to the child. Noel argues that the district court's conclusion that she associated with dangerous persons is unsubstantiated. We disagree.


As noted above, pursuant to NRS 128.105(2)(e), finding that the parent poses a "[r]isk of serious physical, mental or emotional injury to the child" is a ground for terminating parental rights. Here, the district court found that Noel posed just such a hazard to the child, in part, because she associated with individuals who presented a threat to the child's welfare. Noel argues that the district court's conclusion that she affiliated with dangerous persons was unsubstantiated. However, the district court stated that it did not believe Noel's testimony that she did not affiliate with the individuals and we will not substitute our judgment for that of the district court. Matter of Parental Rights as to A.J.G. 122 Nev. at 1423, 148 P.3d at 763. Therefore, we conclude that the district court's determination that the persons with whom Noel associated posed a threat to the child's well being was supported by substantial evidence because Lucas presented numerous witnesses who testified to the character of these individuals.


Further, the record supports the district court's conclusion that Noel presented a serious risk to the child's welfare because she had a history of exercising "poor judgment" with regard to the child's care. Lucas presented evidence of three incidents where the child suffered serious injuries while in Noel's care. Therefore, because a reasonable person could conclude, based on the evidence, that Noel presents a risk of serious physical, mental, or emotional injury to the child, we find that Noel's arguments to the contrary fail.

For the reasons stated above, we conclude that the district court did not abuse its discretion when it terminated Noel's parental rights and, therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. T. Arthur Ritchie Jr., District Judge, Family Court Division
Chesnoff & Schonfeld
Natricia C. Tricano
Michael A. Root
Eighth District Court Clerk