

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 51912

RICHEL JOHNSTON A/K/A RICHEL
PANDAAN JOHNSON,

Appellant,

vs.

THE STATE OF NEVADA;

A.R.R., A MINOR;

A.A.R., A MINOR; AND

A.R.R., A MINOR,

Respondents.

FILED

JUN 30 2009

THACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating a mother's parental rights as to three minor children. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

The mother argues that the evidence was not sufficient to support a finding that termination was in the best interests of the children, and that certain testimony of the family's social worker required dismissal of the petition to terminate parental rights. We have carefully considered the mother's arguments, especially with respect to the sufficiency of the evidence. Because we do not find error in the district court's findings, we affirm.

Sufficiency of the evidence

The district court conducted a full evidentiary hearing. The evidence established that: (1) two of the children spent 26 months in foster care (from October 2003 to December 2005) due to their mother's

methamphetamine addiction; (2) within six months of the Department of Family Services (DFS) reunifying the family, in June of 2006, the children, with their one-year old brother, returned to foster care under circumstances that led, in November of 2006, to the mother's conviction of category B felony child abuse and neglect under NRS 200.508 and her imprisonment for 19 to 48 months; and (3) the children's time in foster care triggered application of NRS 128.109(2), which presumes termination is in a child's best interests when the child has spent more than 14 of the preceding 20 months in foster care.¹ Due in part to the mother's incarceration, the three children, age three, four, and five at the time of the termination hearing, spent all of the preceding 20 months in foster care.

Termination of parental rights requires "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). The primary consideration is "whether the best interests of the child will be served by the termination," NRS 128.105, which requires the trial court to assess the "continuing needs of [the] child for proper physical, mental and emotional growth and development." NRS 128.005(2)(c). The parent also has significant rights at

¹NRS 128.109(2) provides: "If a child has been placed outside of his home pursuant to chapter 432B of NRS and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights." While NRS 128.109(2)'s presumption is rebuttable, Matter of Parental Rights as to J.L.N., 118 Nev. 621, 628, 55 P.3d 955, 960 (2002), the district court found that the mother had not rebutted that presumption.

stake. Matter of Parental Rights as to N.J., 116 Nev. 790, 801, 8 P.3d 126, 133 (2000) (noting that “the parent-child relationship is a fundamental liberty interest”). While “we closely scrutinize whether the district court properly preserved or terminated the parental rights at issue,” Matter of Parental Rights as to A.J.G., 122 Nev. at 1423, 148 P.3d at 763, this court does not share the trial court’s advantage of hearing the testimony and seeing the witnesses. Our review thus remains deferential: “On appeal, we review 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.” Id.

The mother does not dispute the facts or law stated above. She relies instead on the testimony of Helen Ianni, the DFS social worker assigned to the family. Ms. Ianni verified DFS’s petition for termination of parental rights and testified on direct examination to the truth of the petition’s averments, including its averment that termination would be in the best interests of the children. On cross-examination, Ms. Ianni qualified her statements considerably. In her view, the mother’s problems stemmed from her lack of a familial support system in the United States. Ms. Ianni testified that, if on her release from prison the mother returned with the children to her native Philippines, where she would have the support of her large extended family, she might provide proper parental support for the children. Ms. Ianni also expressed concern with the lack of a definite adoptive option for the children.

Ms. Ianni’s optimistic speculation does not overcome the district court’s findings of parental fault and that, given the history of this

troubled family, termination was in the best interests of the children.² We agree with the district court that this is a very difficult case. However, “there does come a time when society must give up on a parent. A child cannot be kept in suspense indefinitely.” Champagne v. Welfare Division, 100 Nev. 640, 651, 691 P.2d 849, 857 (1984), overruled on other grounds by Matter of N.J., 116 Nev. 790, 8 P.3d 126 (2000).

Citing NRS 128.109(2), and Matter of Parental Rights as to J.L.N., 118 Nev. at 627, 55 P.3d at 959, the mother next argues that the district court erred in basing its termination order on the time she and the children had been separated due to her imprisonment. But the district court did not base its determination solely on the presumption stated in NRS 128.109(2). Here, unlike J.L.N., the mother’s conviction was for felony child abuse, not bad checks. The injuries and neglect that led to the mother’s conviction and imprisonment were severe. Because the events leading to the mother’s incarceration bore directly on parental fault, we conclude that the district court properly considered both those events and the period of separation from the children occasioned by her conviction. See NRS 128.106(6) (directing courts to consider a parent’s felony conviction “if 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

²Although the district court reviewed much of the evidence, it did not comment on Ms. Ianni’s testimony. It would have been appropriate to do so, given Ms. Ianni’s years of experience as a social worker, her four and a half years of working with this family, and her role as the DFS professional charged with responsibility for this family’s case. However, our review of the record leads us to conclude that the district court adequately considered Ms. Ianni’s testimony, as well as the other evidence in the record, in making its findings.

necessary for the child's physical, mental or emotional health and development").

Our review of the record leaves us with the firm conviction that the district court adequately considered all of the evidence, both for and against a finding that termination of parental rights was in the best interests of the children. Substantial evidence supported the district court's finding that termination served the best interests of the children, even considering the clear and convincing evidence standard that controls. We will not substitute our judgment for that of the district court. Matter of A.J.G., 122 Nev. at 1423, 148 P.3d at 763.

Ms. Ianni's testimony did not require dismissal of the petition.

Finally, the mother argues that Ms. Ianni's admission on cross-examination that she was not convinced that termination was in the children's best interests amounted to a concession by DFS that it had no case, requiring dismissal. Citing NRS 128.040,³ the mother argues that the Nevada termination statutes do not permit the district attorney's office to file and pursue a termination of parental rights petition on its own. Since DFS was the petitioner, and Ms. Ianni was the DFS representative who verified DFS's petition, the mother sees Ms. Ianni's testimony as a "de facto" withdrawal of the termination petition.

The mother cites no authority beyond the statute itself. The statute does not help her, however. DFS authorized and filed the petition

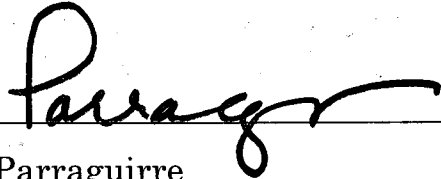
³NRS 128.040 provides, "The agency which provides child welfare services, the probation officer, or any other person, including the mother of an unborn child, may file with the clerk of the court a petition under the terms of this chapter. . . ."

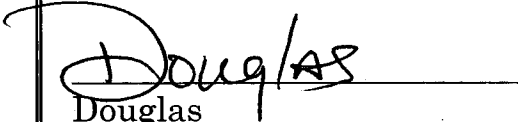
for termination of parental rights and did not withdraw it—indeed, at the hearing, Ms. Ianni reaffirmed the truth of its allegations. Further, the district court appointed counsel to represent the children, and the children’s counsel independently urged termination of parental rights as in their best interests. DFS and the children’s court-appointed counsel have continued forcefully to advocate the termination order in this appeal.

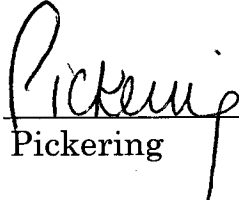
DFS was the petitioner, not Ms. Ianni, and she was not the only DFS employee to testify at the hearing. As “[t]he agency which provides child welfare services,” NRS 128.040, DFS had the authority to commence and thereafter maintain the termination proceeding. The mother cites no authority that would impute the personal views expressed by Ms. Ianni on cross-examination to DFS as a whole. Absent authority to the contrary, Ms. Ianni’s acknowledgment on cross-examination that the children’s extended family in the Philippines might someday offer a viable alternative to foster care in the United States did not warrant dismissal of this proceeding. Cf. In re Discipline of Schaefer, 117 Nev. 496, 510, 25 P.3d 191, 200 (2001) (noting that failure to cite authority for an argument merits its rejection).

The district court based its order terminating parental rights on clear and convincing evidence of parental fault and that termination was in the best interests of the children. Accordingly,

We ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Cynthia Dianne Steel, 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
Clark County District Attorney David J. Roger/Juvenile Division
Legal Aid Center of Southern Nevada
Eighth District Court Clerk