

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: V.D., A MINOR,

No. 51945

JENNIFER D. AND JASON L. B.,  
Appellants,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**FILED**

**JUL 24 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating appellants' parental rights as to a minor child. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Jennifer D. is the child's mother. When the child was born, Jennifer was married to Jessie B., but she asserts that she had a sexual relationship with appellant Jason L. B., who claims he is the child's father.<sup>1</sup>

In July 2005, when the child was approximately 18 months old, the local Department of Family Services (DFS) removed the child from Jennifer's care after Jennifer, who was then 23 years old, was arrested and charged with accessory to murder and two charges of child endangerment in connection with the death of the child's younger sibling. Upon the child's removal, the child was examined by a physician because the child had been living with a convicted child molester, Jennifer's

<sup>1</sup>We note that while the district court also terminated Jessie B.'s parental rights, he is not a party to this appeal.

boyfriend, Arthur Milligan, the sibling's father. The examination revealed that the child had not been molested, but the child was characterized as borderline failure to thrive due to malnutrition. Thereafter, the child was made a ward of the court and placed in DFS's legal custody, and a case plan was developed for Jennifer.

Jennifer eventually pleaded guilty to accessory to murder. Based on her guilty plea, as part of the abuse and neglect proceedings, in January 2007, the district court entered an order finding that DFS was not required to provide reasonable efforts to reunify Jennifer with the child. In the interim, the appellate record demonstrates that Jason was aware that he may be the father of the child at issue in this appeal. At the time, Jason was imprisoned in Oregon. DFS devised a case plan for Jason, which required him to establish paternity and obtain employment and stable housing. After receiving the case plan, Jason informed DFS that his DNA was on file with the state of Oregon and the federal government, and Jason purportedly gave DFS permission to access the DNA for paternity test purposes. In August 2007, DFS filed a petition to terminate Jennifer's and Jason's parental rights. At this point, Jason had still not established his paternity, and the district court entered an order requiring Jason to submit to a paternity test. Upon his release from prison in January 2008, Jason, through counsel, responded to the termination petition.

The hearing on the termination petition took place in May 2008 and by that time, Jason had still not established paternity. A DFS caseworker testified that while Jason was in prison, she spoke with Jason's case manager who informed DFS that the paternity test could be arranged even with Jason in prison. Jason testified that DFS failed to

inform him how to complete a paternity test and that after being released from prison he did not complete a test because all of his funds went to housing and school.

Following the termination hearing, the district court entered an order terminating Jennifer's and Jason's parental rights. In its written order, the district court found that the child's best interest is served by terminating their parental rights. As to Jennifer, the court found that parental fault existed based on the court's previous finding that, under NRS 432B.393(3)(a)(2), DFS was not required to make reasonable efforts to reunite the family as a result of Jennifer's criminal conviction and failure to protect the child's sibling from harm, which resulted in the sibling's death. Concerning Jason, the district court found that parental fault existed based on abandonment. Through respective counsel, Jennifer and Jason have appealed the district court's order.

#### Standard of review

To terminate parental rights, DFS was required to prove, by clear and convincing evidence, both that termination is in the child's best interest and that parental fault exists. NRS 128.105; Matter of Parental Rights as to J.L.N., 118 Nev. 621, 625, 55 P.3d 955, 958 (2002). This court will uphold a district court's termination order if substantial evidence supports the decision. Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004).

#### Termination of Jennifer's parental rights

On appeal, Jennifer contends that termination of her parental rights was improper because the district court erred in finding that DFS was not required to make reasonable efforts to reunify the family based on Jennifer's conviction of accessory to murder of the child's sibling, when another individual actually caused the sibling's death. Jennifer also

argues that her due process rights were violated when the district court failed to conduct a hearing to determine if Jennifer's conduct warranted the finding by the court in the abuse and neglect proceedings.

Generally, under NRS 432B.393, a child welfare agency, such as DFS, is required to make reasonable efforts to "preserve and reunify" a family. When a district court finds that a parent has caused the abuse or neglect of the child, or of the parent's other child, resulting in substantial bodily harm, pursuant to NRS 432B.393(3)(a)(2), reasonable efforts are not required. Moreover, parental fault is established when the district court makes a finding under NRS 432B.393. NRS 128.105.

Here, the appellate record demonstrates that in August 2006, Jennifer pleaded guilty to the crime of accessory to murder after the fact. Further, the record shows that during the police investigation into the sibling's death, Jennifer admitted that she observed bruises on the sibling and was aware of at least two possible incidents of abuse. Despite this knowledge, Jennifer still left the children alone with Arthur Mulligan, a convicted child molester who was physically abusing the child's sibling. The sibling's autopsy report states that the sibling had multiple bruises over her entire body, skull fractures, occipital bone fractures, and rib fractures.

Subsequently, in January 2007, the district court entered an order finding that DFS was not required to make any further reasonable efforts to reunify Jennifer with the child based on Jennifer's guilty plea and the death of the child's sibling. In support of its decision, the district court cited NRS 432B.393(3)(a)(2). The January 2007 order further stated that "proper notification was given to all parties concerning this case regarding the date and time of this hearing." During the abuse and

neglect proceedings, it does not appear that Jennifer challenged the court's finding that no reasonable efforts were required.

Having considered the appellate record and Jennifer's appellate arguments, we conclude that substantial evidence supports the district court's order terminating Jennifer's parental rights.

#### Termination of Jason's parental rights

On appeal, Jason contends that the district court improperly terminated his parental rights because the district court did not make reasonable efforts, under NRS 432B.393, to assist him in establishing paternity. Thus, Jason argues that his due process rights were violated.

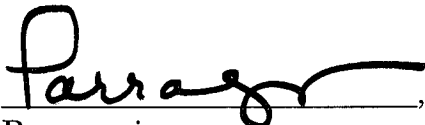
In considering whether to terminate parental rights, when the child is not in the parent's physical custody, the court must also consider the services provided or offered to a parent to facilitate reunification, the child's needs, and the efforts made by the parent to adjust his or her circumstances, conduct or conditions, including maintaining regular visitation or contact with the child. NRS 128.105; NRS 128.107.

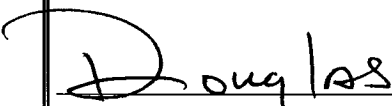
Under NRS 128.095, when a putative father "fails to acknowledge the child or petition to have his parental rights established . . . before a hearing on a petition to terminate his parental rights, he is presumed to have intended to abandon the child." On this issue, we have stated that due process is served, and DFS's statutory obligation of making reasonable efforts at reunification is met, by informing the putative father of the procedures necessary to establish his parental rights. Matter of Parental Rights as to C.J.M., 118 Nev. 724, 735, 58 P.3d 188, 195-96 (2002); Matter of Parental Rights as to Deck, 113 Nev. 124, 133, 930 P.2d 760, 765-66 (1997). Here, the district court found by clear and convincing evidence that Jason failed to establish paternity

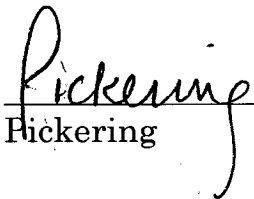
before the hearing on the petition to terminate his parental rights. Thus, the district court found that, under NRS 128.095, Jason had abandoned the child. Having reviewed the record and Jason's appellate brief, we conclude that substantial evidence supports the district court's order terminating Jason's parental rights.

Because substantial evidence supports the district court's order terminating Jennifer's and Jason's parental rights, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Douglas, J.

  
Fickering, J.

cc: Hon. Robert W. Lane, District Judge  
Gibson & Kuehn  
Robert E. Glennen III  
Attorney General Catherine Cortez Masto/Las Vegas  
Nye County Clerk