IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PARENTAL RIGHTS AS TO: K.S.K.K., MINOR CHILD.

CANDICE R. K.,
Appellant,
vs.
WASHOE COUNTY DEPARTMENT OF SOCIAL SERVICES,
Respondent.

No. 52050

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 appellant's parental rights as to a minor child. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.

The district court determined that termination of appellant's parental rights was in the child's best interest and found parental fault by clear and convincing evidence.[1] First, the district court found that despite appellant's initial compliance with her case plan, appellant failed to remain in compliance after the child was removed from appellant's care in January 2007. Second, the district court found that from January 2007 to the time of the termination hearing, the child had resided outside the home for 16 of 20 consecutive months. Based on these two findings, the

[1]We note that while the challenged district court order also terminated the father's parental rights, he is not a party to this appeal.

district court determined that appellant made only token efforts to care for her child, that it was in the child's best interest to terminate appellant's parental rights, and that appellant failed to make parental adjustments, because she did not substantially comply with her case plan within six months after the child was placed outside of appellant's home. Thus, the district court order terminated appellant's parental rights. Appellant has appealed, contending that she substantially complied with her case plan to be reunited with her child and that Washoe County Department of Social Services (WCDSS) failed to refer her for a mental evaluation, which would have brought about lasting parental adjustment enabling the return of her child to her custody.

"In order 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. Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004); NRS 128.105. This court will uphold a district court's termination order if substantial evidence supports the decision. D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

If the child has resided outside the home for 14 of any 20 consecutive months, it is presumed that the parent made only token efforts to support or communicate with the child, avoid being an unfit parent, prevent neglect of the child, or to eliminate the risk of injury to the child, and that termination of parental rights is in the child's best interest. NRS 128.109(1)(a) and (2); NRS 128.105(f). These presumptions cannot be overcome by evidence of the State's failure to provide services to the family. NRS 128.109(3). Further, if a parent fails to substantially comply with the conditions to reunite the family within six months after the child's placement or when the plan is commenced, whichever is later, such

failure to comply is evidence of failure of parental adjustment. NRS 128.109(1)(b). When determining whether a parent has failed to make parental adjustments, the court evaluates whether the parent is unwilling or unable within a reasonable time to substantially correct the conduct that led to the child being placed outside of the home. NRS 128.0126. In considering whether to terminate parental rights, the district court is also required to consider whether additional services would likely bring about lasting parental adjustment so that the child could be returned to the parent within a predictable period. NRS 128.107.

Having considered the parties' appellate arguments in light of the appellate record, we conclude that substantial evidence supports the district court's order terminating appellant's parental rights. In particular, the appellate record indicates that appellant did not rebut the presumption that she made only token efforts to eliminate the "risk of serious physical, mental or emotional injury to the child if he were returned" to appellant. Also, we determine that substantial evidence supports the district court's finding that appellant failed to make parental adjustments and that termination of her parental rights was in the child's best interest. Further, while a mental health evaluation may have assisted appellant in her overall treatment, WCDSS made reasonable efforts to reunite the child with appellant and a lapse in not recognizing appellant's mental health deficiency, if any, is not sufficient to reverse the district court's judgment in light of the appellate record. NRS 128.109(3); see also In re Alexander T., 841 A.2d 274 (Conn. App. Ct. 2004) (holding that based on the appellate record, the department's failure to provide a mental health referral did not make the department's overall efforts fall below what was reasonable). Finally, substantial evidence supports the

district court's finding that continued mental health services would not bring about the necessary lasting adjustment to reunite appellant with her child within a specified time. Accordingly, as substantial evidence supports the district court's order terminating appellant's parental rights, we

ORDER the judgment of the district court AFFIRMED.

Parraguirre, J.

Douglas, J.

Pickering, J.

cc: Hon. Deborah Schumacher, District Judge, Family Court Division
Washoe County Public Defender
Washoe County District Attorney Richard A. Gammick /Civil Division
Washoe District Court Clerk