

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PARENTAL  
RIGHTS AS TO A.D.C.J.; A.D.K.M;  
A.M.M.; AND A.T.M.,

No. 52397

GLORIA T.,  
Appellant,  
vs.  
STATE OF NEVADA, DEPARTMENT  
OF FAMILY SERVICES,  
Respondent.

**FILED**

DEC 04 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating appellant's parental rights as to the minor children. Eighth Judicial District Court, Family Court Division, Clark County; Steven E. Jones, Judge.

Following a bench trial on respondent's petition to terminate appellant's parental rights, the district court determined that termination of appellant's parental rights was in the children's best interests and found by clear and convincing evidence four grounds of parental fault: unfitness; risk of serious physical, mental or emotional injury to the children if returned to appellant's care; failure of parental

adjustment; and neglect. Appellant challenges the district court's order terminating her parental rights.<sup>1</sup>

## DISCUSSION

### Standard of review

“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. See 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.

### Children's best interests

Appellant contends that she was prohibited from introducing evidence, to rebut the statutory presumption that termination of her parental rights was in the children's best interests, when the district court ruled that the eight-year-old child could not testify. When determining what is in the children's best interests, the district court must consider the children's continuing need for “proper physical, mental and emotional growth and development.” NRS 128.005(2)(c). The court may also consider the children's desires regarding termination, “if the court determines [the child] is of sufficient capacity to express his [or her] desires.” NRS 128.107(2). Having considered the appellate record on

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<sup>1</sup>We note that while the district court also terminated the children's fathers' parental rights, the fathers are not parties to this appeal.

this point, we conclude that the district court properly exercised its discretion in not having the eight-year-old child testify. See NRS 50.115 (providing that a judge has reasonable control over the mode and order of witness interrogation).

Concerning the children's best interests, here, the district court found that, based on the statutory presumption, the State proved by clear and convincing evidence that it was in the children's best interests to terminate appellant's parental rights. We conclude that substantial evidence supports the district court's finding that termination of appellant's parental rights was in the children's best interests. Thus, we now consider the district court's parental fault findings.

#### Parental fault

The district court found four parental fault grounds: unfitness based on appellant's excessive use of controlled substances and her association with family members who are chronic drug users, a risk of serious harm to the children if returned to appellant, appellant's failure to make the necessary adjustments to have the children returned to her, and appellant's neglect of the children.

As an initial matter, appellant contends that the district court prevented her from offering evidence of the Department of Family Services' (DFS) failure to make reasonable efforts at reunification and that substantial evidence does not support the district court's findings of parental fault based on her alleged failure to make parental adjustments, as required in NRS 128.0126.

Parental fault may be established by demonstrating any one of several grounds, including failure of parental adjustment. NRS 128.105(2). The failure to make the requisite parental adjustments occurs when a parent is unable or unwilling, within a reasonable time period, to substantially correct the conditions that led to the children's placement outside of the home despite "reasonable and appropriate efforts made by the State" to return the children home. NRS 128.0126. When considering whether to terminate parental rights, the court must consider the services provided or offered to a parent to facilitate reunification, the children's needs, the parent's efforts to adjust his or her circumstances, conduct or conditions, including maintaining regular visitation or contact with the children and with the children's custodian, and whether additional services would likely bring about lasting parental adjustment so that the children could be returned home within a predictable period. NRS 128.107. Thus, an analysis of reasonable efforts requires both a subjective and objective evaluation that should be made on a case-by-case basis. See, e.g., NRS 128.107 (requiring the district court to consider the efforts by a child welfare agency as well as the parent's cooperation in completing his or her case plan objectives). Here, substantial evidence supports the district court's determination that the parental fault findings should not be disturbed due to an alleged lack of reasonable efforts on the part of DFS.<sup>2</sup>

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<sup>2</sup>To the extent that appellant claims that the district court refused to allow her to explore DFS's purported lack of reasonable efforts to reunite the family based on DFS's alleged refusal to consider returning  
*continued on next page . . .*

As for parental fault, a parent is unfit when his or her fault, habit, or conduct toward the children or others fails to provide the children with proper care, guidance, and support. NRS 128.018; NRS 128.105(2)(c). In determining whether a parent is unfit, the district court must consider a parent's excessive use of dangerous drugs that renders the parent consistently unable to care for the children. NRS 128.106(4). Having considered the parties' appellate arguments and the appellate record, we conclude that substantial evidence supports the district court's findings that appellant is an unfit parent due to her excessive drug use.<sup>3</sup> See Matter of Parental Rights as to D.R.H., 120 Nev. 422, 92 P.3d 1230 (2004) (determining that substantial evidence supported the district court's finding that the mother was an unfit parent due to her continued use of drugs, which rendered her consistently unable to care for her

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*... continued*

the children to the paternal grandmother's care after the first reunification effort failed, we determine that the issue should have been raised in the abuse and neglect proceedings. Cf. Matter of Guardianship of N.S., 122 Nev. 305, 311-12, 130 P.3d 657, 661 (2006) (discussing the application of NRS 432B.455 and NRS 432B.457 in abuse and neglect proceedings).

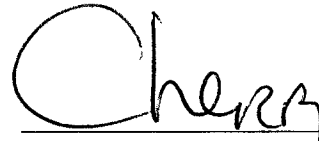
<sup>3</sup>Because at least one finding of parental fault is supported by substantial evidence in the record, we need not consider whether substantial evidence supports the district court's finding that appellant failed to make the necessary parental adjustments, neglected the children, or that a risk of serious harm to the children existed. See NRS 128.105 (providing that, along with a finding that termination is in the child's best interest, the court must find at least one parental fault factor to warrant termination).

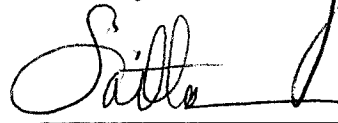
children); Matter of Parental Rights of Weinper, 112 Nev. 710, 715, 918 P.2d 325, 329 (1996) (upholding the district court's finding that the father was unfit due to his recurring positive drug tests and criminal activity), reversed on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000) and superseded by statute on other grounds as stated in Matter of Parental Rights as to N.D.O., 121 Nev. 379, 115 P.3d 223 (2005).


### CONCLUSION

We determine that substantial evidence supports the district court's findings that termination of appellant's parental rights is in the children's best interests and that parental fault exists. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Steven E. Jones, District Judge, Family Court Division  
Special Public Defender David M. Schieck  
Clark County District Attorney David J. Roger/Juvenile Division  
Dawn R. Throne, Ltd.  
Eighth District Court Clerk