

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO J.R.G.,

No. 52677

SAMUEL J. G.,
Appellant,
vs.
REA L. M. A/K/A REA L. P.,
Respondent.

FILED

APR 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order terminating appellant's parental rights as to a minor child. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

In June 2006, respondent, the minor child's natural mother, petitioned the district court to terminate appellant's parental rights. In May 2007, respondent filed an amended petition to terminate appellant's parental rights. The petition alleged that the last time that appellant had contact with his child was in December 2005. Respondent also asserted that appellant had consistently failed to pay child support. Finally, respondent alleged that the minor child's best interest would be served by terminating appellant's parental rights.

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. Matter of D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

Here, the district court determined that termination of appellant's parental rights was in the child's best interest. The district court also found by clear and convincing evidence that appellant had neglected his child because he failed to provide support or maintenance for the child, he is an unfit parent, his efforts to maintain communication with his child were merely token, and the child could be exposed to risk of injury if appellant was allowed continued contact with the child.¹ This appeal followed.²

¹Following appellant's telephonic appearance at an evidentiary hearing, the district court clerk entered a clerk's default because appellant failed to file a written opposition to the petition or file an appearance. Nonetheless, it does not appear from the district court order that a default judgment was entered against appellant.

²On October 30, 2008, a civil proper person appeal statement and other documents were mailed to appellant as part of the pilot program for proper person civil appeals. See ADKT No. 385 (Order Establishing Pilot Program in Civil Appeals, June 10, 2005); see also ADKT No. 385 (Order Extending Pilot Program for Civil Proper Person Appeals, May 10, 2006) (extending the pilot program for civil appeals until further order of this court). Although appellant's appeal statement was due by February 2, 2009, see ADKT. No. 385, Exhibit A (Instructions for Civil Litigants Without Attorneys (explaining that the appeal statement must be filed in this court within 40 days after an appeal is filed)), appellant has not filed his civil appeal statement or otherwise responded to this court's directive regarding compliance with NRAP 24 or payment of the supreme court filing fee. His failure to file the civil appeal statement or pay the filing fee are each a basis for dismissing this appeal; however, given the important rights at stake, we nevertheless have considered the appeal's merits and reviewed the record to determine whether substantial evidence supports

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Parental fault may be established when a parent makes only token efforts to support or communicate with the child. NRS 128.105(2)(f)(1). Under NRS 128.105(2)(b), parental rights may be terminated when a child is neglected. A neglected child is defined as a child “[w]hose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals, or well-being.” NRS 128.014(2). Here, the district court determined that parental fault exists and that appellant made only token efforts to support or communicate with his child and that he neglected his child based on the absence of contact with the child or payment of child support.

The primary consideration in considering whether to terminate parental rights is whether the child’s best interest will be served by the termination. NRS 128.105. The child’s best interest includes considering the child’s continuing need of proper physical, mental, and emotional growth and development. NRS 128.005(2)(c). Here, the district court record reveals that appellant has not seen the child since 2005 and has made only token efforts to communicate with the child. Before his incarceration, appellant made minimal efforts, if at all,

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the district court’s decision. See Matter of Parental Rights as to Carron, 114 Nev. 370, 374, 956 P.2d 785, 787 (1998) (explaining that when a district court order terminating parental rights is appealed, this court closely scrutinizes the district court’s decision), overruled on other grounds by Matter of Parental Rights as to N.J., 116, Nev. 790, 8 P.3d 126 (2000); Price v. Dunn, 106 Nev. 100, 105, 787 P.2d 785, 788 (1990) (explaining that judicial policy favoring a decision on the merits is heightened in domestic relations matters).

to provide support for the child. Further, respondent's husband wishes to adopt the child and has been providing support for the minor child.

Having reviewed the district court record, we conclude that substantial evidence supports the district court's order that appellant neglected his child, made only token efforts to support or communicate with his child, and that termination of his parental rights is in the child's best interest. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
Samuel J. G.
Hillewaert Law Firm
Elko County Clerk

³Because we determine that substantial evidence supports the district court's finding of neglect and that appellant has made only token efforts to support his minor child, we need not consider whether the district court properly found that the child was at serious risk of mental or emotional injury if appellant's parental rights were not terminated and that appellant is unfit because he engaged in activities that were detrimental to the child. 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).