

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO: E.G.G., A MINOR,

No. 52742

EDWAN T.,  
Appellant,  
vs.  
ELIZABETH G.,  
Respondent.

**FILED**

**SEP 09 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 the minor child. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

On appeal, appellant contends that the district court abused its discretion when it found that it is in the child's best interest to terminate his parental rights and the court's parental fault finding.

In order to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the child's best interests 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. If substantial evidence in the record supports the district court's determination that clear and convincing evidence warrants termination, this court will uphold the termination order. Matter of D.R.H., 120 Nev. at 428, 92 P.3d at 1234. Here, the district court determined that it is in the child's best interest that appellant's parental rights be terminated. The district court also found by clear and convincing evidence that parental fault was established based on token efforts.

As for parental fault, the district court need only find one basis to support parental fault. NRS 128.105(2). Under NRS 128.012(1), the term “abandonment of a child” is defined as “any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child.” Intent is the decisive factor in abandonment and may be shown by the facts and circumstances. Smith v. Smith, 102 Nev. 263, 266, 720 P.2d 1219, 1221 (1986), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000). The statute also creates a presumption of abandonment when “a parent . . . leave[s] the child in the care and custody of another without provision for his support and without communication for a period of 6 months.” NRS 128.012(2). This presumption of abandonment is mandatory. See Matter of N.J., 116 Nev. at 804, 8 P.3d at 135. As for token efforts, under NRS 128.105(2)(f)(1), parental fault may be established based on only token efforts to support or communicate with the child.

Here, while the district court’s termination order mentions abandonment, and the record shows that the district court considered whether appellant had abandoned the child, but ultimately the court found that parental fault had been established based on only token efforts by appellant’s failure to provide support for or communicate with the child. In his opening brief, appellant concedes that he did not provide the child with support and he contends that when a parent is incarcerated, the parent should not be held to the same standard as other parents when it comes to support. The district court considered appellant’s incarceration, but the court also noted that appellant did not provide support for the child before he was incarcerated, even though he had the means to do so.

As for communicating with the child, the district court found that appellant made little effort to communicate with the child.

Having reviewed the parties' briefs and the record and considered all arguments raised by the parties, we conclude substantial evidence supports the district court's order terminating appellant's parental rights. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Jennifer Elliott, District Judge, Family Court Division  
Frank J. Toti  
Webster & Associates  
Eighth District Court Clerk