

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 53172

**FILED**

**FEB 05 2010**

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

TABITHIA C.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

ORDER OF AFFIRMANCE

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

Following a bench trial, the district court determined that termination of appellant's parental rights was in the children's best interests and found four grounds of parental fault: failure to make parental adjustments; neglect; risk of serious physical, mental, and emotional injury; and unfitness. Appellant now challenges the district court findings, arguing that there is no evidence in the record to establish parental fault. Appellant also asserts that her due process rights were violated because the court focused on her disability status when terminating her parental rights.

"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 district court's decision that clear and convincing evidence warrants termination. D.R.H., 120 Nev. at 428, 92 P.3d at 1234. Here, we conclude that substantial evidence supports the district court's

finding of failure of parental adjustment; thus, we need not consider whether the district court properly found other grounds of parental fault. See NRS 128.105 (providing that, along with a finding that termination is in the children's best interests, the court must find at least one parental fault factor to warrant termination).

When determining whether a parent has failed to make parental adjustments under NRS 128.105(2)(d), the district court evaluates whether the parent is unwilling or unable within a reasonable time to substantially correct the circumstances, conduct, or conditions that led to the children being placed outside of the home. NRS 128.0126. A parent's failure to adjust may be evidenced by the parent's failure to substantially comply with the case plan to reunite the family within six months after the children have been placed outside of the home. NRS 128.109(1)(b).

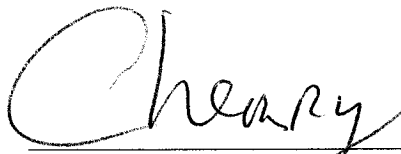
In this case, we conclude that the district court properly determined that appellant failed to make the necessary parental adjustments to preserve her parental rights. In particular, substantial evidence in the record indicates that appellant failed to provide a stable home for the children and demonstrate that she could tend to her children's medical and educational needs, all of which she needed to successfully accomplish in order to comply with the case plan.<sup>1</sup>

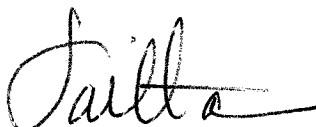
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<sup>1</sup>In deciding whether to terminate parental rights, the district court is also required to consider whether additional services would likely bring about lasting parental adjustment, so that the child could be returned to the parent within a predictable period. NRS 128.107(4). We find no merit in appellant's claim that reasonable efforts were not made and should now be made to reunite the family. The district court considered the services provided by the respondent in its attempt to reunify the family and appellant's failure to utilize those services. NRS 128.107(1).

Appellant also asserts that her due process rights were violated because the “the court used [her] ‘disability’ status to force her to work a job to show stability, then punish her for not being smart enough to raise her children!” We find no merit in this argument. Termination of appellant’s parental rights was not based on her disability status but instead on the children’s best interests and on appellant’s failures to utilize the resources provided by respondent to address her mental health problems and to demonstrate that she could provide for her children’s basic needs.<sup>2</sup> Because 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 and that parental fault existed, we

ORDER the judgment of the district court AFFIRMED.

  
Cherry, J.

  
Saitta, J.

  
Gibbons, J.

<sup>2</sup>Appellant further claims that NRS 128.109(2), which presumes that termination of parental rights is in the children’s best interests when the children have resided outside of the home, is unconstitutional and violates her substantive due process rights. There is nothing in the record to indicate that the district court’s best interest findings were based on NRS 128.109(2). Nonetheless, we find no merit to this claim. See Matter of Parental Rights as to D.R.H., 120 Nev. 422, 426-28, 92 P.3d 1230, 1233-34 (2004) (rejecting the argument that NRS 128.109(2) violates substantive due process because the statute is “narrowly tailored to promote the state’s compelling interest in the welfare of and permanency planning for children who have been taken from the physical shelter of their parents’ custody”).

cc: Hon. Robert W. Lane, District Judge  
Robert E. Glennen III  
Attorney General/Carson City  
Attorney General/Las Vegas  
Nye County District Attorney/Pahrump  
Nye County Clerk