

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO: A.T., J.T., AND M.M.,
MINORS.

No. 53547

SCOTT M. AND LYNN C.T.,
Appellants,
vs.
CLARK COUNTY DEPARTMENT OF
FAMILY SERVICES,
Respondent.

FILED

JUL 20 2010

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 appellants' parental rights as to the minor children. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

Scott M.'s appeal

As an initial matter, on March 19, 2010, this court entered an order to show cause why appellant Scott M.'s appeal should not be dismissed as abandoned based on his failure to file his civil proper person appeal statement. Our March 19 order cautioned Scott that his failure to comply with that order would result in the dismissal of his appeal. A response from Scott was due in this court on April 5, 2010. To date, Scott has failed to file his civil proper person appeal statement or otherwise respond to this court's directive. Accordingly, we conclude that Scott has abandoned this appeal and we dismiss Scott's appeal.

Lynn C.T.'s appeal

Following a termination hearing, the district court entered an order terminating appellant Lynn C.T.'s parental rights on the basis that

it was in the children's best interests and the court found four grounds of parental fault: unfitness, failure to make parental adjustments, token efforts to support or communicate with the children, and abandonment.¹ On appeal, Lynn, through counsel, only challenges the district court's findings as to parental fault, and she makes a substantive due process argument regarding the presumptions set forth under NRS 128.109.

Parental fault

Lynn argues that any evidence of parental fault was cured by her substantial compliance with her case plan. She argues that respondents Clark County Department of Family Services (CCDFS) alleged that she used methamphetamines but there was no evidence that she tested positive for the drug. Lynn further argues that despite the lack of assistance by the CCDFS, she was able to secure employment and housing.

Parental fault may be established by demonstrating, in relevant part, unfitness of the parent or a parent's failure to make parental adjustment. NRS 128.105(2)(c) and (d). NRS 128.018 defines a parent as unfit if she, "by reason of [her] fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support." When determining whether a parent has failed to

¹The record contains insufficient evidence that Lynn abandoned her children. NRS 128.105(2)(g) (outlining abandonment as ground for terminating parental rights). We note, however, there need only be one parental fault factor to warrant termination. 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).

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 child being placed outside of the home. NRS 128.0126. A parent's failure to adjust may be evidenced by the parent's unwillingness to substantially comply with the case plan to reunite the family within six months after the child has been placed outside of the home. NRS 128.109(1)(b).

In this case, we conclude that substantial evidence supports the district court's determination that Lynn is an unfit parent and that she failed to make the necessary parental adjustments to preserve her parental rights. Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004) (holding that this court will uphold a district court's termination order if substantial evidence supports the decision). With regard to unfitness, Lynn failed to demonstrate an ability to provide adequate care for the children. Specifically, Lynn's testimony and the testimony of CCDFS employees familiar with this case demonstrated that Lynn failed to understand her children's special needs and to attempt to comprehend those special needs. We agree with Lynn's assertion that there was also testimony presented indicating otherwise, but this court does not reweigh evidence or witness credibility. See Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004). Concerning parental adjustment, we conclude that Lynn failed to substantially comply with her case plan to demonstrate parental adjustment. In particular, the case plan required that Lynn provide a drug-free environment for the children. The record indicates that Lynn failed to submit to drug testing

on numerous occasions and that she understood that these missed tests would count as positive test results.

Lastly, as for token efforts, under NRS 128.105(2)(f), parental fault may be established when a parent engages in only token efforts to (1) support or communicate with the child, (2) prevent neglect of the child, (3) avoid being an unfit parent, or (4) eliminate risk of serious physical, mental or emotional harm to the child. Moreover, if a child has resided outside of a home for 14 of any 20 consecutive months, it is presumed that the parent has made only token efforts to care for the child. NRS 128.109(1)(a).² Here, the district court properly found that the statutory presumption applied because the children had been outside of the home for over 30 consecutive months at the time of the termination hearing. The record supports the district court's findings that Lynn did not support the children or demonstrate that she could provide an adequate support system for the children, and thus, Lynn failed to overcome the statutory presumption of token efforts. See NRS 128.105(2)(f).

Accordingly, we conclude that the district court's parental fault findings are supported by the record. Specifically, substantial evidence supports the district court's findings that Lynn was unfit to

²In deciding whether to terminate parental rights when the child is not in the parent's physical custody, the district court must 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 Lynn's claim that reasonable efforts were not made to reunite the family. The district court considered the services provided by the CCDFS in its attempt to reunify the family and Lynn's failure to utilize those services. NRS 128.107(1).

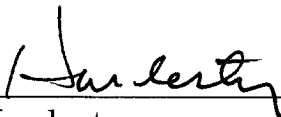
parent her children, she failed to make the necessary parental adjustments for their return, and she only made token efforts to support or communicate with the children. Matter of D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

Due process


Lynn 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 for a specific time period, is unconstitutional and violates her substantive due process rights. We find no merit to this claim. See Matter of D.R.H., 120 Nev. at 426-28, 92 P.3d at 1233-34 (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").

Because we conclude that substantial evidence supports the district court's finding that parental fault existed, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Robert E. Glennen III
Scott M.
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk