IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO BABY GIRL C. A/K/A N.A.C., A MINOR.

JOHN R. G.,
Appellant,
vs.
CATHOLIC CHARITIES OF SOUTHERN NEVADA,
Respondent.

No. 53581

FILED

SEP 09 2009

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

ORDER OF AFFIRMANCE

This is a proper person 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; Sandra L. Pomrenze, Judge.

On June 8, 2009, respondent filed in this court a motion to dismiss this appeal for lack of jurisdiction. Appellant opposes the motion. In its motion to dismiss, respondent argues that because appellant did not seek to challenge the termination order within six months from the time the order was entered, this court lacks jurisdiction to consider this appeal. To support this contention, respondent cites to NRS 128.150(5), which provides in relevant part that

> [s]ubject to the disposition of any appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this subsection, or this chapter, the order cannot be questioned by any person in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice or lack of jurisdiction of the parties or of the subject matter.

In the present matter, the district court entered an order terminating appellant's parental rights on March 11, 2008. An amended termination

order was filed on March 31, 2008. The district court docket entries do not show that a notice of entry for the March 31 order was entered in the record and nothing indicates that written notice of that order's entry was served. Appellant filed his notice of appeal one year later on March 31, 2009.

This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). An appeal may be taken from a final judgment in an action or proceeding commenced in the court in which the judgment is rendered. NRAP 3A(b)(1). A final judgment is one that disposes of the issues presented in the case and leaves nothing for the future consideration of the court, except for attorney fees and costs. See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000). The March 31 order is a final, appealable judgment.

Under NRAP 4(a)(1), the time for filing a notice of appeal begins when the written judgment or final order is entered and expires 30 days "after the date of service of written notice of the entry of the judgment or order appealed from." A proper and timely filed notice of appeal is jurisdictional. Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987). Serving written notice of a judgment's entry simply triggers the 30-day outer limitations period and provides notice that this time limit has begun to run. Thus, a party can appeal as soon as a judgment is entered and before formal written notice of the judgment's entry is served. But NRAP 4(a)(1) prescribes a 30-day appeal period after notice of a judgment's entry is served, and it appears that no notice of the March 31 termination order's entry was ever served in this case; appellant timely filed his notice of appeal and this court has

jurisdiction to consider this appeal. Thus NRS 128.150(5) does not apply. Accordingly, we deny respondent's motion to dismiss.

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. 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. See Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004); NRS 128.105.

The appellate record shows that appellant was personally served with notice of the March 11, 2008, termination hearing. Appellant failed to file any responsive pleadings, did not attend the termination hearing, and did not request permission to participate in the proceedings telephonically. The district court determined that it is in the child's best interest that appellant's parental rights be terminated. The court also found parental fault on the basis of neglect. Under NRS 128.105(2)(b), parental rights may be terminated for "[n]eglect of the child." NRS 128.014(2) defines a "[n]eglected child" 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." The district court found that appellant had failed to provide any subsistence or care for the child.

In his proper person case appeal statement, appellant contends that he was unable to pursue participation in the termination proceedings because he was involved with criminal proceedings in California and later Nevada. Appellant insists that he never neglected the child because he has never had the chance to care for the child in the first instance. Appellant further contends that he attempted to communicate

with the child but that all of the correspondence was allegedly confiscated by the district attorney to be used as evidence against him in his Nevada criminal proceedings. Appellant does not offer any evidence to support this assertion. Moreover, the record shows that he was personally served with notice of the termination petition and hearing, and appellant concedes that, despite this notice, he took no action to defend against the termination petition.

Having reviewed the parties' briefs and the record and considered the 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.[1]

Hardesty, C.J.

Parraguirre, J.

Pickering, J.

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
John R. G.
Ellsworth Moody & Bennion Chtd.
Eighth District Court Clerk

[1]We note that appellant's failure to pay the filing fee could constitute a basis for dismissing this appeal. Nevertheless, we have elected to review this appeal's merits.