

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO: D.E.D, JR.; K.F.D.;
A.K.D., JR.; B.V.D., H. J.-L.D.,

No. 53722

DERON D.,
Appellant,

vs.

STATE OF NEVADA, DEPARTMENT OF
FAMILY SERVICES; D.E.D., JR.; K.F.D.;
A.K.D. JR.; B.V.D., JR.; AND H.J.-L.D.,
Respondents.

FILED

APR 09 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 appellant's parental rights as to the minor children. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

FACTS

Following a trial, the district court determined that termination of appellant's parental rights was in the children's best interests and found two grounds of parental fault: failure to make parental adjustments and token efforts to support or communicate with the children. Appellant now challenges the district court findings, arguing that there is no evidence in the record to establish that the best interests of the children would be served by termination, or that there was parental fault.

Having considered appellant's contentions in light of the record and the parties' appellate briefs, we conclude that substantial evidence supports the district court's order terminating appellant's parental rights. Therefore, we affirm.

DISCUSSION

Standard of review

“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 decision. D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

Best interests

Appellant maintains that any best-interest presumption was rebutted because he established that he can provide adequate care for the children. Appellant explains that he has moved into a three-bedroom home that is appropriate for the children and that family members will assist him in caring for the children.

In this case, the record shows that the children resided outside the home for 21 months at the time of the hearing; thus, the district court properly applied the statutory presumption. Appellant then had the burden to present evidence to overcome that presumption. Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1426, 148 P.3d 759, 764 (2006). The district court’s overarching concern, as it must be, was for the well-being of the children, four of whom have identified special needs. See NRS 128.105 (providing that “[t]he primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination”). The court found that appellant’s inability to demonstrate that he can care for the children or provide an adequate support system for their care made it unclear as to whether the appellant could tend to the children’s needs. The court’s conclusion was based in large part on the testimony presented at the

termination hearing. While contrary evidence also exists, this court may not reweigh evidence or witness credibility, see Castle v. Simmons, 120 Nev. 98, 86 P.3d 1042 (2004), but rather, we look to see whether substantial evidence in the record supports a parental termination order.

In instances when the children have been placed in foster care, the district court must look at specific considerations, including whether the children have become integrated into the foster family “to the extent that [their] familial identity is with that family.” NRS 128.108. Other considerations include the length of time the children have lived in a stable foster home and the permanence as a family unit of the foster family. See NRS 128.108(4) and (5). In this case, the court focused on the love and attention that the foster family is committed to giving the children and was clearly impressed by the foster parents’ ability to provide for the children’s needs. The court further noted that the children had essentially been integrated into the foster family, and the family has expressed the desire to adopt the children. Although the record clearly indicates that appellant has bonded with the children and has consistently maintained visitation, in determining whether the children’s best interests would be served by terminating parental rights, the district court properly considered the children’s continuing need for “proper physical, mental and emotional growth and development.” NRS 128.005(2)(c).

Given appellant’s failure to adequately demonstrate that he can care for these children, or provide a sufficient support system for their care, and the foster parents’ ability to handle the children’s needs, we conclude that substantial evidence supports the district court’s finding that appellant failed to rebut the statutory presumption that termination of appellant’s parental rights was in the children’s best interests. D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

Parental fault

Appellant argues that any evidence of parental fault was cured by his substantial compliance with the case plan. Appellant adds that he has since filed for divorce from his wife (who was essentially noncompliant with the case plan), and he reiterates that he has moved into a three bedroom home that is appropriate for the children. Appellant further notes that he has an adequate support system in place to assist him in caring for the children.

Parental fault may be established by demonstrating, in relevant part, a parent's failure to make parental adjustment. NRS 128.105(2)(d). 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 child being placed outside of the home. NRS 128.0126.

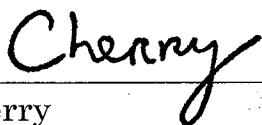
In this case, we conclude that the district court properly concluded that appellant failed to timely make the necessary parental adjustments to preserve his parental rights. In particular, substantial evidence in the record indicates that appellant failed to show an ability to provide adequate care for the children. At the termination hearing, the respondents provided testimony from specialists from the Clark County Department of Family Services who expressed their belief that appellant could not care for the children. We agree with appellant's assertion that there was also testimony presented indicating otherwise, but, as stated above, this court does not reweigh evidence or witness credibility. See Castle, 120 Nev. 98, 86 P.3d 1042.

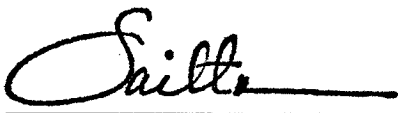
Additionally, under NRS 128.105(2)(f), parental fault may be established when a parent engages in only token efforts to (1) support or


communicate with the child, (2) prevent neglect of the child, (3) avoid being an unfit parent, or (4) eliminating risk of serious physical, mental or emotional harm to the child. Moreover, under NRS 128.109(1)(a), 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. Here, the district court properly found that the statutory presumption applied because the children had been outside of the home for 21 consecutive months at the time of the hearing. Because substantial evidence supports the district court's findings that appellant did not support the children or demonstrate that he could provide an adequate support system for the children, appellant failed to overcome the statutory presumption of token efforts. See NRS 128.105(2)(f).

Having reviewed the parties' briefs and the record, and considered all arguments raised by the parties, we conclude that none of appellant's contentions warrant reversal of the district court's decision. Additionally, substantial evidence supports the district court's conclusion that termination is warranted. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Vincent Ochoa
Clark County District Attorney/Juvenile Division
Legal Aid Center of Southern Nevada
Eighth District Court Clerk