

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO
C.T.; A.T.; AND R.B., MINORS.

No. 54107

CHRISTINA M. B. A/K/A CHRISTINA
M. T.,

Appellant,

vs.

CLARK COUNTY DEPARTMENT OF
FAMILY SERVICES; C.T., A MINOR;
A.T., A MINOR; AND R.B., A MINOR,
Respondents.

FILED

DEC 04 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 children. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

FACTS

Following a bench trial on respondent Clark County Department of Family Services' (DFS) petition to terminate appellant's parental rights, the district court determined that termination of appellant's parental rights was in the children's best interests and found three grounds of parental fault: appellant's failure to make parental adjustments, only token efforts to care for the children, and abandonment. Based on these findings, the district court ordered appellant's parental rights terminated.

Appellant has appealed, contending that DFS failed to prove the children's best interests were served by termination of her parental rights. Appellant also maintains that there is no evidence in the record to establish 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.

Children's best interests

Appellant notes that two of the three children have special needs and that the district court should have considered the children's lack of adoptive resources when considering whether termination was in the children's best interests. Additionally, appellant maintains that any best-interest presumption was rebutted because she established that she had complied with her case plan, had a strong bond with the children, and she maintained visitation with the children.

When determining the children's best interests, the district court must consider the children's continuing need for "proper physical, mental and emotional growth and development." NRS 128.005(2)(c). If the children have been in foster care for 14 of any 20 consecutive months, it is presumed that the termination of parental rights is in the children's best interests. NRS 128.109(2).

The record shows that the children were in foster care for 26 months; 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 found that appellant used illegal drugs throughout the majority of the underlying proceedings, and although she had recent success battling her addictions in inpatient care, she never demonstrated the ability to remain drug-free outside of a treatment program, or that she could provide a stable drug-free environment for the children. Although the record clearly indicates that appellant has a bond with the children and has consistently maintained visitation with them, in determining whether the children's best interests would be served by terminating parental rights, the district court looked at the children's continuing need for "proper physical, mental and emotional growth and development." NRS 128.005(2)(c). Given appellant's long history of drug abuse and inability to care and provide for the children, two of whom have special 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.¹ D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

¹We reject appellant's argument that the district court should have considered the children's lack of adoptive resources when considering whether it was in the children's best interests to terminate appellant's parental rights. Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1425, 148 P.3d 759, 764 (2006) ("Nowhere in Nevada's statutes is there a requirement that the State prove an adoptive placement for the child before parental rights can be terminated.").

Parental Fault

Citing her current success in a drug treatment program, appellant challenges the district court's parental fault findings. 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 court evaluates whether the parent is unwilling or unable within a reasonable time to substantially correct the conduct that led to the children being placed outside of the home. NRS 128.0126.

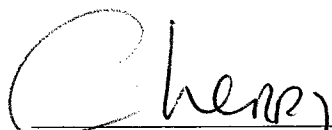
In this case, we conclude that the district court properly concluded that appellant failed to make the necessary parental adjustments to preserve her parental rights. In particular, the record indicates that appellant failed to substantially correct, within a reasonable time, the behavior that led to the children being placed outside of the home. Id. Appellant's numerous positive drug tests demonstrate her failure to comply with the case plan to maintain a drug-free environment at all times, or a stable home for the children.


While appellant's enrollment in her current inpatient program signals her laudable intent to overcome her addiction, it is impossible to predict whether appellant will be successfully rehabilitated. Thus, despite appellant's recent success with rehabilitation, "there does come a time when society must give up on a parent. A child cannot be kept in suspense indefinitely." Champagne v. Welfare Division, 100 Nev. 640, 651, 691 P.2d 849, 857 (1984), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).


CONCLUSION

Because we conclude that substantial evidence supports the district court's finding that termination of appellant's parental rights was in the child's best interests and that parental fault existed, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

²Because we determine that substantial evidence supports the district court's finding of failure of parental adjustment, we need not consider whether the district court properly found that appellant only made token efforts to care for the children. 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). We note, however, that the record contains no evidence that appellant evinced a settled purpose to forego custody and relinquish her rights, and thus, the district court's finding of abandonment is not supported by substantial evidence. NRS 128.012.

Additionally, appellant argues that termination of her parental rights was not proper because the district court improperly applied NRS 128.108, which outlines specific considerations the court should consider when a child has been placed in a foster home. Appellant's claim is without merit. Even assuming that the district court improperly applied NRS 128.108, there is substantial evidence to support the district court's order terminating appellant's parental rights.

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Christopher R. Tilman
Clark County District Attorney David J. Roger/Juvenile Division
Legal Aid Center of Southern Nevada
Eighth District Court Clerk