

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO: A.L.B., A MINOR.

No. 54429

JOE NATHAN B., SR. A/K/A  
JONATHAN B.,  
Appellant,

vs.

CLARK COUNTY DEPARTMENT OF  
FAMILY SERVICES,  
Respondent.

**FILED**

MAR 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *H. Ingerson*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an 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; Cynthia Dianne Steel, Judge.

FACTS

Following a bench trial, the district court determined that termination of appellant's parental rights was in the child's best interest and found five grounds of parental fault: failure to make parental adjustments; neglect; risk of serious physical, mental, and emotional injury; token efforts to support or communicate with the child; and unfitness. Appellant now challenges the district court findings, arguing that there is no evidence in the record to establish that the best interest of the child would be served by termination, or that there was parental fault. Appellant also asserts that his procedural due process rights were violated by the termination of his parental rights.

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.

### Child's best interest

Appellant notes that the child has special needs and argues that the district court should have considered the lack of adequate adoptive resources when considering whether termination was in the child's best interest. Additionally, appellant maintains that any best-interest presumption was rebutted because he established that he can care for the child and that he has a strong bond with the child.

When determining the child's best interest, the district court must consider the child's continuing need for "proper physical, mental and emotional growth and development." NRS 128.005(2)(c). If the child has resided outside of the home for 14 of any 20 consecutive months, it is presumed that the termination of parental rights is in the child's best interest. NRS 128.109(2).

In this case, the record shows that the child resided outside the home for over 30 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). In this case, the district court's over-arching concern was for the safety of the child, who is indisputably in a medically fragile condition. The court found that appellant's inability to demonstrate an adequate support system for taking care of the child made it unclear as to whether the appellant could tend to the child's medical needs. Although the record clearly indicates that appellant has bonded with the child and has consistently maintained visitation, in determining whether the child's best interest would be served by terminating parental rights, the district court looked at the child's continuing need for "proper physical, mental and emotional growth and development." NRS 128.005(2)(c).

Given appellant's failure to exhibit a support system to care for the medically fragile child, 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 child's best interest.<sup>1</sup> 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. Parental fault

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<sup>1</sup>We disagree with appellant's argument that the district court should have considered the lack of adequate adoptive resources when considering whether it was in the child's best interest 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.").

may be established by demonstrating, in relevant part, unfitness of the parent, a parent's failure to make parental adjustment, and that the child would be at risk of serious injury if returned to the parent's home. NRS 128.105(2)(c), (d), and (e).

NRS 128.018 defines a parent as unfit if he, "by reason of his 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 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 failure 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). An injury to a child's health occurs, in relevant part, when a parent "[f]ails, by specific acts or omissions, to provide the child with adequate care, [or] supervision." NRS 128.013(1)(d).

In this case, we conclude that the district court properly concluded that appellant is an unfit parent, that he failed to make the necessary parental adjustments to preserve his parental rights, and that the child would be at risk of serious physical injury if returned to appellant. In particular, substantial evidence in the record indicates that appellant failed to show an ability to prevent risk of injury to the child.<sup>2</sup>

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<sup>2</sup>The record contains insufficient evidence that appellant made only token efforts to be with his child, or that he neglected his child. NRS  
*continued on next page . . .*

### Due process

Appellant also asserts that his procedural due process rights were violated because respondent was allowed to proceed to the termination of parental rights under NRS Chapter 128, without first initiating an abuse and neglect proceeding against appellant under NRS Chapter 432B. We find no merit to this argument. Nothing under NRS Chapter 128's statutory framework requires that an NRS Chapter 432B abuse and neglect adjudication be entered against a parent before termination proceedings are initiated against that parent.<sup>3</sup>

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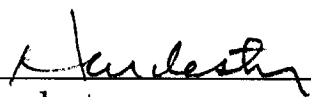
*... continued*


128.105(2)(f) (outlining token effort requirements); NRS 128.014(2) (defining neglected child). Nonetheless, substantial evidence supports the district court's finding of parental fault based on the above-mentioned factors. 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).

<sup>3</sup>Appellant also claims that because there was no abuse and neglect proceeding against him under NRS Chapter 432B, it was a statutory violation for the district court to terminate his parental rights based on the presumptions set forth in NRS 128.109. We find no merit to this argument. Nothing under NRS 128.109 indicates that an NRS Chapter 432B proceeding must be conducted against a specific parent before the statutory presumptions can be applied to that parent. See NRS 128.109 (providing that "[i]f a child has been placed outside of [her] home," pursuant to NRS Chapter 432B, the statutory presumptions set forth under NRS 128.109 "must apply to determine parent's conduct").

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 interest and that parental fault exists,<sup>4</sup> 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  
Special Public Defender  
Clark County District Attorney/Juvenile Division  
Eighth District Court Clerk.

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<sup>4</sup>We find no merit to appellant's remaining claims that (1) the district court failed to make independent findings regarding parental fault and best interest, and (2) the court improperly precluded appellant from offering evidence of the department's failure to provide reasonable efforts.