IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO J.R.S., A MINOR.

DUSTIN M. S. AND JILL R. S.,
Appellants,
vs.
CLARK COUNTY DEPARTMENT OF FAMILY SERVICES,
Respondent.

No. 54686

FILED

NOV 10 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 child. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

Evidentiary concerns

As an initial matter, appellants maintain that the district court improperly permitted undisclosed witnesses to testify and erroneously allowed respondent to introduce the "J case file" in its entirety, even though it contained unauthenticated documents and exhibits. According to appellants, respondent failed to respond to their discovery request, made two months prior to the termination of parental rights hearing.

We perceive no abuse of discretion in the district court's decision to allow the challenged evidence. Appellants, after not receiving a response to their discovery request, failed to take any action to compel discovery. Instead, they waited until the eve of the termination hearing to file a motion in limine to exclude witnesses and documents not revealed to them during discovery, and when the court denied the motion, appellants raised various discovery-related objections at the hearing. See EDCR

2.34(a) (providing that "[u]nless otherwise ordered, all discovery disputes (except disputes presented at a pretrial conference or at trial) must first be heard by the discovery commissioner"); EDCR 5.37 (applying EDCR 2.34 to matters in the family division); Hansen v. Universal Health Servs., 115 Nev. 24, 27, 974 P.2d 1158, 1160 (1999) (reviewing a district court's decision to admit evidence for an abuse of discretion). Furthermore, the unauthenticated documents were attached to the juvenile court file reports that were required to be submitted to the court, as they outlined the child's progress, as well as appellants' progress with the case plan. Cf. NRS 128.090(3) (providing that information contained in a report filed pursuant to NRS 432B may not be excluded from a termination hearing by the invoking of any privilege); Matter of Parental Rights as to N.D.O., 121 Nev. 379, 384-85, 115 P.3d 223, 226-27 (2005) (recognizing that hearsay statements could not be kept out of termination of parental rights hearings, as those statements appeared in reports (which outlined, in relevant part, the child's progress) that were required to be submitted to the district court).

Additionally, although appellants argue that respondent violated various provisions of the Nevada Rules of Civil Procedure, they failed to provide any analysis as to how those rules were violated, and thus, we decline to address that argument. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that because appellant failed to cogently argue his position on appeal, this court would not consider his appellate contentions). We further conclude that appellants' motion in limine was properly denied because it was filed the day before the hearing and the district court did not have a copy of the motion at the hearing. See EDCR 2.47 (providing

that a motion in limine must be "filed not less than 45 days prior to the date set for trial and must be heard not less than 14 days prior to trial"). Accordingly, the district court did not abuse its discretion by permitting alleged undisclosed witnesses to testify and by admitting the juvenile court file in its entirety.

Merits

The district court determined that termination was in the child's best interest and found four grounds of parental fault: neglect, unfitness, failure to make parental adjustments, and risk of serious physical, mental, or emotional injury to the child. Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004) (recognizing that "[i]n 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); NRS 128.105. On appeal, appellants challenge the court's findings, arguing that the record is insufficient to establish (1) that the child's best interest would be served by termination, and (2) parental fault. Having considered appellants' contentions in light of the record and the parties' appellate briefs, we conclude that substantial evidence supports the district court's order terminating appellants' parental rights. D.R.H., 120 Nev. at 428, 92 P.3d at 1234 (noting that this court will uphold a district court's termination order if substantial evidence supports the decision). Therefore, we affirm.

Child's best interest

When a child has resided outside of the home for 14 of any 20 consecutive months, it is presumed that termination of parental rights is in the child's best interest. NRS 128.109(2). In this case, the child had resided outside the home for 16 months as of the time of the district court hearing; thus, the district court properly applied the statutory

presumption. Appellants then failed to rebut the presumption. Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1426, 148 P.3d 759, 764 (2006). The record reflects that the district court's overarching concern, as it must be, was for the child's well-being. 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 appellants were unable to demonstrate that they could adequately care for the child. The court's conclusion is supported by substantial evidence in the record, as it was based on the testimony and documentary evidence presented at the termination hearing. Notably, appellant Dustin testified that, at that time, appellants were not ready for reunification with their child. Thus, we conclude that the child's best interest is served by the termination of appellants' parental rights.

Parental fault

Appellants argue that any evidence of parental fault was cured by their substantial compliance with the case plan. Parental fault may be established by demonstrating, among other things, failure to make parental adjustments. NRS 128.105(2)(d). In this case, substantial evidence supports the district court's determination that appellants failed to make the necessary parental adjustments. D.R.H., 120 Nev. at 428, 92 P.3d at 1234.

When determining whether parents have failed to make parental adjustments under NRS 128.105(2)(d), the district court evaluates whether the parents are 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. Parents' failure to adjust may be evidenced by the parents' 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). We conclude that, here, substantial evidence supports the district court's decision that appellants failed to timely and substantially comply with their case plan to demonstrate parental adjustment. In particular, the case plan required that appellants attend domestic violence and grief counseling sessions, and "maintain a home free of clutter, debris or any health hazards that would be detrimental to the safety and well-being of the child." At the termination hearing, respondent provided testimony from Department of Family Services employees familiar with the case; those employees testified that the parents did not sufficiently fulfill the above-mentioned case plan objectives. Thus, the district court's conclusion that appellants were unable to substantially correct circumstances within a reasonable time is supported by substantial evidence.[1]

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[1]Because we determine that substantial evidence supports the district court's finding of failure to make parental adjustments, we need not consider whether the district court properly found that appellants neglected the child, that appellants were unfit parents, or that a risk of harm to the child existed. 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).

In deciding whether to terminate parental rights, the district court is also required to 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 appellants' claim that reasonable efforts were not made to reunite the family. The district court considered the services provided by the

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Although, as to each of the issues discussed above, conflicting testimony and documentary evidence was presented, this court will not reweigh the evidence or witness credibility. See Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004). Accordingly, because the court did not abuse its discretion in admitting undisclosed evidence and substantial evidence supports the district court's findings regarding the child's best interest and 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
William L. Wolfbrandt, Jr.
Aaron Grigsby
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk

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respondent in its attempt to reunify the family and appellants' failure to sufficiently utilize those services. NRS 128.107(1).