

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO: M.J.C.F.,

No. 54915

STEVE A. M.,
Appellant,
vs.
CAROLYN C.,
Respondent.

FILED

APR 09 2010

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.

The district court determined that termination of appellant's parental rights was in the child's best interest and found two grounds of parental fault: only token efforts to support or communicate with the child and unfitness. Appellant has appealed, contending that the district court based its decision to terminate his parental rights primarily on his financial situation, rather than what was in the best interest of the child.¹

¹Respondent has informed this court that attorney Denise A. Pifer is no longer representing her on appeal. Because Pifer no longer represents respondent, the clerk of this court shall remove Pifer as counsel of record for respondent.

Respondent has also recently submitted an adoption decree and the child's "new birth certificate" for our appellate consideration, and has requested that this court seal these documents. Because these documents are not part of the district court record, they are not properly before us, and we have not considered them in resolving this appeal. See Carson

As an initial matter, on January 12, 2010, respondent's then-counsel filed a "suggestion of death" with this court, indicating that the child in question has recently passed away as a result of complications related to osteosarcoma and that the appeal is now moot. Respondent, proceeding in proper person, also filed a recent letter with this court, in which she acknowledges that the child has passed away and likewise maintains that the appeal is now moot. We disagree with the assumption that this appeal has now become moot with the child's passing. The parent's interest in maintaining parental rights does not per se cease with the passing of the child in question. See In Interest of E.C.G., 345 N.W.2d 138, 141 (Iowa 1984) (holding that the issue regarding the termination of parental rights is not moot after the child in question has passed away because the parent retained "a voice in determining where the child should be buried" and an interest in prospective property rights). We thus turn to the merits of appellant's appeal.

"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. Parental fault may be established when a parent makes only token efforts to support or communicate with the child. NRS 128.105(2)(f)(1). A parent is unfit when, by his own fault, habit, or conduct toward the child, he fails to provide the child with proper care, guidance, and support. NRS

... continued

Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981). The clerk of this court is therefore directed to return these documents to respondent, unfiled. Respondent's request to seal these documents is denied as moot.

128.018. 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.

In this case, the record indicates that the district court's overarching concern was for the child, who at the time of the termination hearing was in a medically fragile condition. Having considered appellant's arguments and the appellate record, we conclude that substantial evidence supports the district court's order terminating appellant's parental rights. Specifically, appellant made only minimal efforts to support or provide care for the child, and, despite the medical evidence presented to him, appellant failed to acknowledge the child's medical condition. Furthermore, the 16-year-old child signed an affidavit in which he asked for the court to terminate appellant's parental rights. Therefore, we conclude that substantial evidence supports the district court's finding of parental fault and that the child's best interest was served by terminating appellant's parental rights. NRS 128.105(2)(f)(1) (token efforts); NRS 128.018 (unfitness); NRS 128.005 (stating that the key considerations in a termination case are "[t]he continuing needs of a child for proper physical, mental and emotional growth and development"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

²Appellant's remaining claims that the district court erred by (1) "allowing admission of allegations of child's alleged cancer" when respondent failed to execute a medical release to confirm respondent's allegations of the child's condition, (2) accepting the affidavit of the minor child, and (3) ordering a drug test of appellant solely for the purpose of discrediting appellant, are without merit.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Steve A. M.
Denise A. Pifer
Carolyn C.
Eighth District Court Clerk