IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO H.K.F. and L.H.F.

REBECCA ANN G.,
Appellant,
vs.
STATE OF NEVADA DEPARTMENT OF FAMILY SERVICES; H.K.F.; AND L.H.F.,
Respondents.

No. 55057

FILED

SEP 14 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. Eighth Judicial District Court, Clark County; James A. Brennan, Judge.

The district court determined that termination was in the children's best interests and found two grounds of parental fault: unfitness and failure to make parental adjustments.[1] Matter of Parental Rights as to D.R.H., 120 Nev. 422, 428, 92 P.3d 1230, 1234 (2004) (holding 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, appellant challenges the court's findings, arguing that no evidence in the record establishes (1) that the best interests of the children would be served by termination, and (2) 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. D.R.H., 120 Nev. at 428, 92 P.3d at 1234 (noting that this

[1]Thus, the district court did not rely on an incorrect "jurisdictional" standard.

court will uphold a district court's termination order if substantial evidence supports the decision). Therefore, we affirm.

DISCUSSION

Children's best interests

When children have resided outside of the home for 14 of any 20 consecutive months, it is presumed that termination of parental rights is in the children's best interest. NRS 128.109(2). In this case, the children had resided outside the home for 30 months as of the time of the district court hearing; thus, the district court properly applied the statutory presumption. Appellant 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 district court found, based on testimony presented, that appellant did not demonstrate that she had the parenting skills and the stability necessary to care for the children, given their mental and physical needs. That finding is supported by substantial evidence in the record.

Further, even though under NRS 128.110(2)(b), the Department of Family Services "[s]hall, if practicable, give preference" to placing siblings together, nothing under that statute implies that termination is necessarily not in the children's best interests if the end result is sibling separation. Regardless, the record here demonstrates that doing so was not practicable and in the children's best interests at that time. Specifically, in its termination order, the district court recognized that the two children were initially placed in foster care together, but because of one child's serious behavioral issues, that child was removed from the home and placed in a mental health facility for additional treatment. Any preference to keep siblings together, although significant, is only one of several factors that the district court must consider when determining the best interests of the children. See In re Marriage of

Jones, 309 N.W.2d 457, 461 (Iowa 1981) (stating that the rule of keeping siblings together "is not ironclad . . . and circumstances may arise which demonstrate that separation may better promote the long-range interests of children"); In re Davis, 465 A.2d 614, 621 (Pa. 1983) (concluding that the separation of siblings "cannot be automatically elevated above all other[ ] [factors], but must be weighed in conjunction with the other[ ] [factors]"); Crouse v. Crouse, 552 N.W.2d 413, 419 (S.D. 1996) ("Keeping siblings together is a splendid aspiration, but it cannot override the controlling question of their best interests."); Hughes v. Gentry, 443 S.E.2d 448, 451-52 (Va. Ct. App. 1994) (recognizing that separation of siblings should be considered by the court but it is not considered paramount to other factors); Pace v. Pace, 22 P.3d 861, 867-68 (Wyo. 2001) ("[T]he effect of separating siblings from each other is just one of several factors courts consider in determining the best interests of the children.").

In this case, the record demonstrates that the district court's overarching concern was for the safety and well-being of the children. Given appellant's failure to demonstrate that she can care for the children or provide a sufficient support system for their care, we conclude that substantial evidence supports the district court's findings and that appellant failed to rebut the statutory best interest presumption. D.R.H., 120 Nev. at 428, 92 P.3d at 1234.[2]

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[2]We disagree with appellant's argument that the district court should have decided differently given the lack of adequate adoptive resources available to H.F.K. 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.").

Parental fault

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

With regard to unfitness, NRS 128.018 provides that a parent is unfit if she, "by reason of [her] fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support." Here, appellant failed to demonstrate an ability to provide adequate care for the children. Specifically, testimony and documentary evidence presented at the termination hearing demonstrated that appellant has been emotionally and physically abusive towards her children and that she has only recently begun to address her mental health issues. Thus, there remains uncertainty as to whether appellant can properly function as a fit parent.

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). We conclude that, here, appellant failed to timely and substantially comply with her case plan to demonstrate parental adjustment. In particular, the case plan required that appellant recognize

and respond appropriately to the physical, emotional, and nurturing needs of the children. In order to fulfill this step, appellant, among other things, had to take her prescribed medication as directed. The record indicates that appellant did not begin to regularly take the prescribed medication until over two years after the children's removal and only one month before the termination hearing. Thus, the district court's conclusion that appellant was unable to substantially correct circumstances within a reasonable time is supported by substantial evidence.

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 substantial evidence supports the district court's findings regarding the children's best interests and that parental fault existed, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Chief Judge, Eighth Judicial District
Hon. James A. Brennan, Senior Judge
Special Public Defender
Clark County District Attorney/Juvenile Division
Legal Aid Center of Southern Nevada
Eighth District Court Clerk