IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO: C.S.M.

MAURICIO I. M.,
Appellant,
vs.
STATE OF NEVADA DEPARTMENT OF FAMILY SERVICES, AND C.S.M.,
Respondents.

No. 55581

FILED

JAN 18 2011

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

The district court determined that termination was in the child's best interest and found three grounds of parental fault: (1) conduct leading to a finding under NRS 432B.393(3), (2) unfitness, and (3) risk of serious emotional injury. 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 determination, arguing that no evidence in the record establishes that the child's best interest would be served by termination and 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 court will uphold a district court's termination order if substantial evidence supports the decision). Therefore, we affirm.

DISCUSSION

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 17 consecutive months at the time of the district court hearing; thus, the district court properly applied the statutory presumption. Appellant then failed to rebut that presumption.[1] 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 appellant was convicted of murdering the child's mother, the child was currently receiving meaningful mental health counseling, the child did not wish to have any further contact with appellant, and by maintaining parental rights, the child would suffer emotional injury. NRS 128.107(2) (stating that the court may consider the child's desires

[1]The hearing transcript shows that the district court considered the child's relationship with half-siblings when determining the child's best interest.

regarding termination, "if the court determines the child is of sufficient capacity to express his or her desires"); D.R.H., 120 Nev. at 433, 92 P.3d at 1237 (holding that when determining what is in the child's best interest, the relevant considerations include the child's continuing need for "proper physical, mental and emotional growth and development"); Matter of Parental Rights as to J.L.N., 118 Nev. 621, 628, 55 P.3d 955, 959-60 (2002) (holding that while incarceration cannot be the sole basis for terminating parental rights, it is a factor appropriate for the court to consider in making a termination decision). The district court's best interest conclusion is supported by substantial evidence in the record, as it was based on the testimony and documentary evidence presented at the termination hearing.

Parental Fault

Appellant argues that any evidence of parental fault was cured by his substantial compliance with the case plan. We disagree.

Generally, under NRS 432B.393, a child welfare agency, such as the Department of Family Services ("DFS"), is required to make reasonable efforts to "preserve and reunify" a family. When a district court finds that a parent has committed murder, however, reasonable efforts are not required. NRS 432B.393(3)(a)(1). And when the district court makes a finding under NRS 432B.393(3), parental fault is established. NRS 128.105(2). Here, the appellate record demonstrates that (1) appellant was convicted of first degree murder, and (2) the district court subsequently found that DFS was not required to make any further reasonable efforts to reunify appellant with the child. As such, substantial evidence supports the district court's parental fault finding based on

appellant's conduct. See NRS 128.105(2); NRS 432B.393(3)(a)(1). Additionally, because the record supports the district court's finding that the child would suffer emotional harm if appellant's parental rights were retained, we conclude that substantial evidence supports the court's parental fault finding based on a serious risk of emotional injury to the child if returned to appellant. NRS 128.105(2)(e). In light of these findings, appellant's argument that substantial compliance with the case plan "cured" parental fault, such that termination was not warranted, lacks merit. D.R.H., 120 Nev. at 428, 92 P.3d at 1234.[2]

Although, as the district court noted, appellant's direct appeal from his murder conviction remains pending, adoptive resources are currently available for the minor child, and whether any meaningful relationship between the child and appellant would be possible is uncertain. As we noted before, "[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). Accordingly, because we conclude that substantial evidence supports the district court's finding

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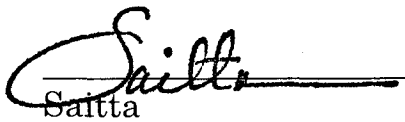
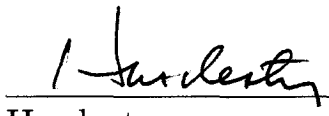
[2]Because we determine that substantial evidence supports the district court's finding of parental fault based on appellant's criminal conduct, NRS 128.105(2); NRS 432B.393(3)(a)(1), and a serious risk of emotional injury to the child if returned to appellant, NRS 128.105(2)(e), we need not consider whether the district court properly found that appellant was an unfit parent. 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).

that termination of appellant's parental rights is in the child's best interest and that parental fault exists,[3] we

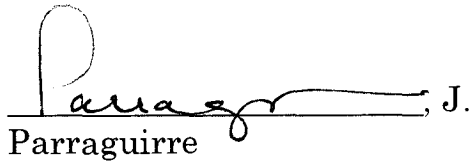
ORDER the judgment of the district court AFFIRMED.



Saitta, J.



Hardesty, J.



Parraguirre, J.

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Special Public Defender
Clark County District Attorney/Juvenile Division
Legal Aid Center of Southern Nevada
Eighth District Court Clerk

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[3]Appellant also argues that the district court erred in allowing alleged hearsay testimony and excluding appellant's sole witness from testifying. We conclude that any potential error was harmless, as the admittance or exclusion of these witnesses did not affect appellant's substantial rights at the termination hearing. NRCP 61. There is ample other evidence in the record to support terminating appellant's parental rights.