

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO A.C.K., A MINOR.

No. 56147

RENA A. M. K.,
Appellant,

vs.

THE STATE OF NEVADA
DEPARTMENT OF FAMILY
SERVICES,
Respondent.

FILED

JUN 09 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 the minor child. Eighth Judicial District Court, Clark County; James A. Brennan, Senior Judge.

The district court determined that termination of appellant's parental rights was in the child's best interest and found parental fault by clear and convincing evidence.¹ First, the district court found that NRS 128.109's statutory presumptions applied because the child had resided outside of appellant's care for 27 months. Second, the district court found that appellant had failed to adjust to becoming a proper parent within a reasonable time, as she failed to complete significant parts of her case plan. Based on these findings, the district court determined that appellant had failed to make the necessary parental adjustments, made only token efforts to care for her child, and that it was in the child's best

¹We note that, while the challenged district court order also terminated the father's parental rights, he has not appealed that decision.

interest to terminate appellant's parental rights. As a result, the district court terminated appellant's parental rights. Appellant has appealed.

"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. When determining what is in 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 a child was removed from his or her home pursuant to NRS Chapter 432B and has resided outside that 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).

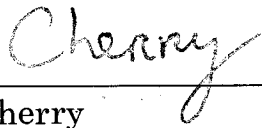
As for parental fault, if the child has resided outside of the home for 14 of any 20 consecutive months, the district court must apply certain presumptions. First, it is presumed that the parent made only token efforts to (1) support or communicate with the child, (2) avoid being an unfit parent, (3) prevent neglect of the child, or (4) eliminate the risk of injury to the child. NRS 128.109(1)(a); NRS 128.105(f). Second, it is presumed that the parent failed to make the necessary adjustments to have the child returned to his or her care if the parent fails to substantially comply with the conditions to reunite the family within six months after the child's placement or when the plan is commenced, whichever is later. NRS 128.109(1)(b); NRS 128.105(2)(d). When considering whether a parent has failed to make parental adjustments, the district court must evaluate whether the parent is unwilling or unable,


within a reasonable time, to substantially correct the conduct that led to the child being placed outside of the home. NRS 128.0126. Once the statutory presumptions arise, the parent has the burden to present evidence to overcome the presumption. Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1426, 148 P.3d 759, 764 (2006). Here, the district court found that these statutory presumptions applied, as the child had resided outside the home for 27 months, and that appellant failed to overcome the presumptions.

Having considered the parties' arguments on appeal and the appellate record, we conclude that substantial evidence supports the district court's finding that the statutory presumptions applied, that appellant failed to substantially correct within a reasonable period the conditions that led to the child's removal from the home, and that appellant failed to rebut the statutory presumption.² The child was removed from appellant's care due to appellant's domestic violence issues and illegal drug abuse. While the evidence shows that appellant completed various assessments required in her case plan, the case plan also required appellant to complete specific domestic violence and drug treatment programs. The record demonstrates that 27 months after the child was removed from the home, appellant had still not completed the required programs, was involved in domestic violent incidents, and continued to use drugs.

²We note that the district court need only find one parental fault factor, along with a finding that termination is in the child's best interest, to warrant termination. See NRS 128.105.

Accordingly, because substantial evidence supports the district court's findings regarding the child's best interest and parental fault, we ORDER the judgment of the district court AFFIRMED.³


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Chief Judge, Family Court Division, Eighth Judicial District Court
Hon. James A. Brennan, Senior Judge
Special Public Defender
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk

³Regarding appellant's remaining arguments on appeal, we have considered them and conclude that they lack merit and do not warrant reversal of the district court's order.