

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO A.R.B. AND J.N.B., JR.

No. 56938

JOE N. B. A/K/A BROWN N. B. A/K/A  
JOE N. B., SR. A/K/A JOHNATHON B.  
A/K/A JOHNATHAN B. A/K/A  
JONATHON B. A/K/A JOE N. B.,

Appellant,

vs.

STATE OF NEVADA DEPARTMENT  
OF FAMILY SERVICES; A.R.B.; AND  
J.N.B., JR.,  
Respondents.

**FILED**

SEP 15 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. W. W. W.*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating appellant's parental rights to the minor children. Eighth Judicial District Court, Family Court Division, Clark County; Bryce C. Duckworth, Judge.<sup>1</sup>

The district court determined that termination of appellant's parental rights was in the children's best interests and found parental fault by clear and convincing evidence.<sup>2</sup> First, the district court found that NRS 128.109's statutory presumptions applied because the children had resided outside appellant's care for 20 months. Second, the district court found by clear and convincing evidence three grounds of parental fault:

<sup>1</sup>It appears that the bench trial was conducted before district court judge James Brennan, who also made oral findings on the record. The written order terminating appellant's parental rights was signed by district court judge Bryce Duckworth.

<sup>2</sup>While the challenged district court order also terminated the mother's parental rights, she has not appealed that decision.

neglect, unfitness, and failure of parental adjustment. Appellant challenges the district court's order terminating his parental rights.

"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. See 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.

If the children were removed from their home pursuant to NRS Chapter 432B and have resided outside that home for 14 of any 20 consecutive months, it is presumed that termination of parental rights is in the children's best interests. NRS 128.109(2). When determining what is in the children's best interests, the district court must consider the children's continuing needs for "proper physical, mental and emotional growth and development." NRS 128.005(2)(c).

As for parental fault, if the children have resided outside of the home for 14 of any 20 consecutive months, the district court must apply certain presumptions. One presumption requires the district court to presume that the parent failed to make the necessary adjustments to have the children 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 children'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 children 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 presumptions. Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1426, 148 P.3d 759, 764 (2006).

Having considered the parties' arguments on appeal and the appellate record, we conclude that substantial evidence supports the district court's findings that the statutory presumptions applied, that it was in the children's best interests to terminate appellant's parental rights, that appellant failed to substantially correct within a reasonable period the conditions that led to the children's removal from appellant's care, and that appellant failed to rebut the statutory presumptions.<sup>3</sup> Respondent State of Nevada Department of Family Services (DCFS) has been involved with this family since 1999 regarding, primarily, the parents' inability to provide stable housing and neglect of the children's needs.

While the evidence shows that appellant has a bond with the children, he maintained visitation with them, and gave them money, appellant failed to make sufficient lasting changes that would ensure the children's safe return to his care, despite reasonable efforts made by DCFS. In particular, the evidence shows that although appellant testified that he earns approximately \$1600 a month, he failed to demonstrate that he could provide stable housing or income sufficient to meet the children's needs.

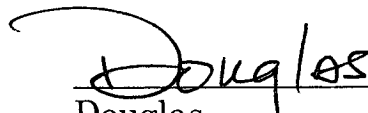
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<sup>3</sup>Because at least one finding of parental fault is supported by substantial evidence in the record, we need not consider whether substantial evidence supports the district court's remaining parental fault findings. See NRS 128.105 (providing 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).

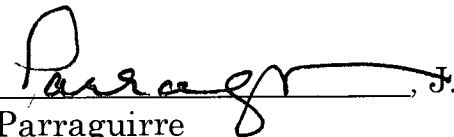
The record also reveals that appellant denies that the children need special care to address concerns with their mental health. Moreover, at trial appellant testified that he was aware of some problems with the children's prior foster home, but never reported the issue to DCFS. Further, each time that the children were removed by DCFS from the home, they remained in foster care until the mother was available and prepared to resume their custody. Thus, as found by the district court, appellant is unable to provide the proper care, guidance, and support that his children need.

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

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division  
Special Public Defender  
Clark County District Attorney/Juvenile Division  
Law Office of Michelle Darquea  
Eighth District Court Clerk

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<sup>4</sup>Regarding 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.