IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO N.A.T. AND A.N.T., MINORS.

CLARK COUNTY DEPARTMENT OF FAMILY SERVICES,
Appellant,
vs.
SHAKERRI C. AND ROBERT T.,
Respondents.

No. 57086

FILED

SEP 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY D. Malone
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying appellant's petition to terminate respondent Shakerri C.'s parental rights.[1] Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

"In order to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the child[ren]'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. When children have been placed outside a parent's home pursuant to NRS Chapter 432B, specific presumptions must be applied to determine a parent's conduct. NRS 128.109(1). First, if the children have resided outside the home for "14 of any 20 consecutive months, it must be

[1]Although appellant has named respondent Robert T. as a party to this appeal, the termination hearing did not proceed against him, as he agreed to voluntarily relinquish his parental rights if appellant was successful in terminating Shakerri C.'s parental rights.

presumed that the parent" has made only token efforts to care for the children as outlined in NRS 128.105(2)(f). NRS 128.109(1)(a). Second, if the children have resided outside the home for "14 of any 20 consecutive months, the best interests of the child[ren] must be presumed to be served by the termination of parental rights." NRS 128.109(2). These presumptions are rebuttable. Matter of Parental Rights as to J.L.N., 118 Nev. 621, 625-26, 55 P.3d 955, 958 (2002).

Here, the district court determined, among other things, that the NRS 128.109 statutory presumptions did not apply, as the children resided outside the home for only 15 months. We conclude that the district court erred as a matter of law in making this determination. Specifically, the NRS 128.109 presumptions are mandatory when the children have resided outside the home for a minimum of 14 months, in any consecutive 20 months. The record demonstrates that the children resided outside their home for 15 months within a consecutive 20-month period. The children were never returned to Shakerri C.'s custody, even for a trial basis. Thus, the minimum number of months required to trigger the statutory presumptions was satisfied. Once the presumptions apply, the district court is required to presume that the parent has made only token efforts to care for the children and that it is in the children's best interests to terminate the parent's parental rights. NRS 128.109(1)(a) and (2). As noted above, these presumptions can be rebutted.

Because the district court erred in determining that the NRS 128.109 presumptions did not apply, the district court also failed to determine whether Shakerri C. had rebutted the presumptions. Accordingly, we reverse the district court's order denying appellant's

petition to terminate Shakerri C.'s parental rights and we remand this matter to the district court for it to conduct a new hearing to apply the NRS 128.109 presumptions, to afford Shakerri C. an opportunity to rebut those presumptions, and for the district court to make findings that would support its order denying the petition to terminate her parental rights, or to enter an order terminating Shakerri C.'s parental rights based on the application of NRS 128.109's mandatory presumptions and a failure to rebut those presumptions.

It is so ORDERED.[2]

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Clark County District Attorney
Clark County District Attorney/Juvenile Division
Aaron Grigsby
Law Offices of Romeo R. Perez, P.C.
Christopher R. Tilman
Eighth District Court Clerk

[2]We have determined that this appeal should be submitted for decision on the briefs and appellate record without oral argument. See NRAP 34(f)(1).