

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PARENTAL RIGHTS
AS TO A. E. D., T. M. D., AND T.
A. D., MINOR CHILDREN.

No. 35746

CHRISTINE A. D.,

Appellant,

vs.

NEVADA STATE WELFARE DIVISION,
DIVISION OF CHILD AND FAMILY
SERVICES,

Respondent.

FILED

DEC 15 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Christine A. D. appeals a district court order terminating her parental rights as to her three minor children.

We recently abandoned the long-followed "jurisdictional/dispositional grounds" test outlined in *Champagne v. Welfare Division*, 100 Nev. 640, 647, 691 P.2d 849, 854 (1984), in favor of a "best interest/parental fault standard" for termination cases. See *Matter of Parental Rights as to N.J.*, 116 Nev. ___, 8 P.3d 126 (2000). Similar in essence to the former standard, this new standard looks first to the best interests of the children as the "primary consideration" but also requires that at least one element of parental fault as enumerated in NRS 128.105(2)(a)-(f) be established by clear and convincing evidence before termination can be ordered. See *id.* We will uphold a district court's termination order if it is supported by substantial evidence. *Id.* at ___, 8 P.3d at 129.

Christine argues that the district court erred in finding jurisdictional grounds to terminate her parental rights. Under the rubric of the N.J. standard, Christine

argues, in essence, that the district court erred in finding clear and convincing evidence sufficient to terminate her rights.

Regarding the best interests of the children, the district court heard testimony that the children indicated that they wanted to be adopted by their foster parents. The district court further found the foster home to be "a stable and loving home." Christine does not challenge the district court's finding that freeing the children for adoption would be in their best interests. We conclude that the district court did not err in so finding.

The district court found several grounds of parental fault including that Christine had "failed to adjust to become a proper parent within a reasonable period of time." Pursuant to NRS 128.105(2)(d), parental rights may be terminated based on "[f]ailure of parental adjustment."¹ Especially relevant to this ground of parental fault is the fact that Christine failed to overcome her drug problem, testing positive for illegal drugs at various times during the State's involvement. Christine argues that she had shown signs of improvement by testing negative at a number of drug screenings during 1998. Importantly, however, Christine also tested positive for illegal drugs on several occasions during the course of the State's intervention. Notably she tested positive just before trial, in December of 1999. While Christine tested negative a

¹According to NRS 128.0126, "'Failure of parental adjustment' occurs when a parent or parents are unable or unwilling within a reasonable time to correct substantially the circumstances, conduct or conditions which led to the placement of their child outside of their home, notwithstanding reasonable and appropriate efforts made by the state or a private person or agency to return the child to his home."

few times during 1998, the positive tests demonstrate her inability or unwillingness to address the primary problem preventing reunification.

Regarding the State's efforts to return the children to Christine, the State had formally intervened and had been working with the family toward the goal of reunification for approximately three years by the time of trial. Specifically, the court had before it evidence that, during that time, the State had prepared two different case plans outlining steps toward reunification. The record shows that the State continually provided the information and assistance necessary to address the case plan. While Christine addressed some of the items in her case plan, such as attending some of the required counseling and holding a job for a period of time, she did not complete her drug-counseling program and repeatedly tested positive for illegal drugs.

The district court did not err in concluding that Christine had failed, within a reasonable time, to overcome the issues for which the children were removed from her care. Furthermore, we conclude that the district court did not err in finding that the State had made reasonable and appropriate efforts to return the children to Christine.²


Finally, Christine argues that she should have been given more time to address her drug abuse problem because her problem is not "irremediable." For support, she cites Matter of Parental Rights of Montgomery, 112 Nev. 719, 917 P.2d 949

²The district court found four additional grounds of parental fault: neglect of the children, unfitness of the parent, risk of serious injury, and token efforts. See NRS 128.105(1)(b)-(c), (e)-(f). Because we affirm the district court's findings on the grounds discussed above, we need not discuss these additional grounds. See NRS 128.105(2) (requiring that only one ground of parental fault be demonstrated).

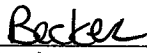
(1996)³, in which we reversed a district court order terminating the parental rights of a young mother struggling with alcoholism and who had fully complied with her case plan four months before trial. While Christine may ultimately overcome her drug abuse problem given an indefinite period of time, in contrast to Montgomery, Christine concedes that she has not fully complied with her case plan by failing to overcome her drug abuse within a reasonable time, the primary factor related to the grounds of parental fault in this case.

For the foregoing reasons, we conclude that there is substantial evidence to sustain the district court's conclusions regarding the best interests of the children and parental fault by clear and convincing evidence. Accordingly, we

AFFIRM the order of the district court terminating the parental rights of Christine A. D. as to her children.


_____, C.J.
Rose


_____, J.
Young


_____, J.
Becker

cc: Hon. Robert E. Gaston, District Judge, Family Court
Division
Jeffrey A. Cogan
Attorney General
Clark County Clerk

³As discussed in N.J., 116 Nev. at ___, 8 P.3d at 131-32, the Montgomery court improperly applied the 1995 amendment to NRS 128.105 by failing to consider the best interests of the child in that matter.