

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PARENTAL RIGHTS
AS TO C. M. L. AND V. Y. I.,

No. 35871

JEFF L. AND TAMMY H.,

Appellants,

vs.

THE STATE OF NEVADA, DEPARTMENT OF
HUMAN RESOURCES, DIVISION OF CHILD
AND FAMILY SERVICES,

Respondent.

FILED

AUG 10 2001

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting a petition to terminate parental rights.

"Termination of parental rights is 'an exercise of awesome power.'"¹ Accordingly, this court closely scrutinizes whether the district court properly terminated the parental rights at issue.² "Due process requires that clear and convincing evidence be established before terminating parental rights."³ However, "this court will uphold termination orders based on substantial evidence, and will not substitute its own judgment for that of the district court."⁴

Appellants Tammy H. and Jeff L. first contend that there was insufficient evidence adduced at the hearing to terminate their parental rights.

NRS 128.105 lists "the basic considerations relevant in determining whether to terminate parental rights: the best

¹Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126, 129 (2000) (quoting Smith v. Smith, 102 Nev. 263, 266, 720 P.2d 1219, 1220 (1986)).

²Id. (citations omitted).

³Id. (citing Cloninger v. Russell, 98 Nev. 597, 655 P.2d 528 (1982)).

⁴Id. (citing Kobinski v. State, 103 Nev. 293, 738 P.2d 895 (1987)).

interests of the child and parental fault."⁵ In Parental Rights as to N.J.,⁶ this court abandoned prior case law which required a "strict adherence to finding of parental fault to terminate parental rights before the district court considers the best interests of the child." Therefore, the district court must now consider the best interests of the child in determining parental fault, rather than "rigidly and formulaically" considering "the conduct of the parents in a vacuum, without considering the best interests of the child."⁷

Our review of the record reveals substantial evidence to support the district court's decision to terminate Tammy H. and Jeff L.'s parental rights. In particular, Tammy H. and Jeff L. did not obtain verifiable employment or stable housing during the pendency of the proceedings. Moreover, although Jeff L. did complete an outpatient drug treatment program during the two-year period, he did not enroll in a support group, did not complete an individual or family counseling program, and eventually relapsed. Tammy H. never completed a drug treatment program or a counseling program, and both Tammy H. and Jeff L. either failed or refused to submit to numerous requests for drug tests during the two-year period.

Additionally, the record reveals that the children were placed in their current foster home in January 1999, that their foster parents want to adopt them, and that the foster parents provide the children with, among other things, medical care, counseling, and speech therapy. The children's immunizations have been updated while in their foster parents'

⁵Parental Rights as to N.J., 116 Nev. at 795, 8 P.3d at 129-30.

⁶Id. at 799-800, 8 P.3d at 132.

⁷Id.

care, the children have developed age appropriately, and they have apparently bonded with their foster parents. Thus, it was not unreasonable for the district court to find that Tammy H. and Jeff L. failed to substantially comply with their case plan and that termination of Tammy H. and Jeff L.'s parental rights was in the best interests of the children. Accordingly, we conclude that there is substantial evidence in the record to support the district court's decision to terminate Tammy H. and Jeff L.'s parental rights.

Tammy H. and Jeff L. also contend that counsel should have been appointed to represent them when the petition for protection was filed and that their procedural due process rights were violated because counsel was not appointed until after the petition to terminate parental rights was filed.

In any proceeding for terminating parental rights, "if the parent or parents of the [children] desire to be represented by counsel, but are indigent, the court may appoint an attorney for them."⁸ Additionally, this court has held that in a termination of parental rights proceeding, procedural due process requires: (1) a clear and definite statement of the allegations of the petition; (2) notice of the hearing and opportunity to be heard or defend; and (3) right to counsel.⁹

The record reveals that Tammy H. and Jeff L. were afforded all of these due process rights. Specifically, they received copies of the written case plan and the petition to terminate parental rights. Further, despite their failure to appear at the September 1999 termination hearing, the district

⁸NRS 128.100(2).

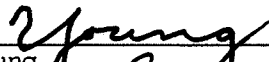
⁹See Matter of Parental Rights as to Weiner, 112 Nev. 710, 713-14, 918 P.2d 325, 328 (1996), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).


court set aside the first order terminating parental rights to afford Tammy H. and Jeff L. an opportunity to be heard. They were present and testified at the February 2000 termination hearing. Finally, the district court did appoint counsel to represent Tammy H. and Jeff L. in the termination proceedings. Accordingly, we conclude that Tammy H. and Jeff L.'s procedural due process rights were not violated simply because they did not have an attorney during the prior two years.

Finally, Tammy H. and Jeff L. contend that they did not receive effective assistance of counsel. However, there is nothing in the record to support their claim. Accordingly, we conclude that Tammy H. and Jeff L.'s counsel's representation did not fall below an objective standard of reasonableness.¹⁰

Having considered the arguments and find that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Robert E. Gaston, District Judge, Family Division
Family Division
Attorney General
Connolly & Fujii
Clark County Clerk

¹⁰See Davis v. State, 107 Nev. 600, 601-02, 817 P.2d 1169, 1170 (1991) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).