IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO M.J. AND M.J.,

No. 36933

PHILLIP J.,

Appellant,

vs.

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

Respondent.

FILED

OCT 08 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court terminating appellant's parental rights as to the minor children.

Appellant raises one issue on appeal: whether the Division of Child and Family Services (DCFS) made reasonable efforts to reunify him with the children. Appellant does not challenge the district court's best interest determination.

NRS 432B.393 provides that DCFS "shall make reasonable efforts to preserve and reunify the family of a child to prevent or eliminate the need for his removal from his home and to make it possible for his safe return to his home." NRS 432B.340(1)(a) provides that "[i]f the agency which provides protective services determines that a child needs protection. but is not in imminent danger from abuse or neglect, it may . . . [o]ffer to the parents . . . a plan for services and inform him that the agency has no legal authority to compel him to accept the plan." NAC 432B.190(2) provides that "[a]ll protective services for children must be delivered in a planned manner" and each case must have a written case plan which is updated every six months and reviewed and signed by the case worker's supervisor.

Appellant contends that DCFS did absolutely nothing to meet its continuing obligation to make reasonable efforts to reunify appellant with his children. Appellant points out that: (1) DCFS knew back in

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August of 1997 that he was the children's putative father but did nothing to find him, relying instead on the children's mother's assertions that she did not know where he was; and (2) DCFS failed to create a reunification case plan for him and failed to notify counsel regarding scheduled appointments for development of the plan. Accordingly, appellant contends that his due process rights were denied and therefore this court should reverse the termination order and remand the case for the preparation and effectuation of a reunification case plan.

Because termination of parental rights is an exercise of enormous power, equivalent to imposing a civil death penalty, "this court closely scrutinizes whether the district court properly preserved or terminated the parental rights at issue."[1] After reviewing the record, we are satisfied that DCFS made reasonable efforts to reunify appellant with the children and therefore the district court properly terminated appellant's parental rights.

First, appellant's argument regarding DCFS's purportedly unreasonable attempts to locate him lacks merit. Had DCFS attempted to terminate appellant's parental rights one year earlier, before appellant voluntarily came forward, the ambiguities in the record as to what DCFS actually did (or did not do) to find appellant might be relevant. However, because nearly a year passed after appellant came forward, the issue of DCFS's efforts to find appellant are immaterial. The record contains substantial evidence of appellant's continued abandonment of the children for the eleven months after he came forward. During this time, the record is clear that appellant did not visit his children, did not support them, and did not communicate with them. Since all of the elements of abandonment were established in a period of time other than when appellant's location was unknown, we conclude that DCFS's attempts to locate appellant are irrelevant and therefore fail to constitute adequate grounds to reverse the district court's order terminating appellant's parental rights.

Next, we conclude that appellant's due process rights were not violated when his parental rights were terminated without the existence of a reunification plan. As with the parent's inaction in Matter of Parental Rights as to Deck, appellant's inaction here "was a greater cause for the

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[1]Matter of Parental Rights as to N.J., 116 Nev. 790, 795, 8 P.3d 126, 129 (2000).

lack of a reunification plan than any conduct by [DCFS]."[2] The evidence presented at trial established that social worker Kathleen Petit was ready and willing to help appellant develop a reunification plan. Appellant failed to attend all but one of the appointments Petit scheduled for him. The one time he did appear at Petit's office he was forty-five minutes late. We conclude that it was not unreasonable for Petit to reschedule the appointment since she was already engaged in another matter by the time appellant arrived. Thereafter, appellant missed six more appointments, for a total of nine missed appointments. Because appellant's own conduct thus prevented the creation of a reunification plan, we conclude that his due process rights were not violated when his parental rights were terminated without a reunification plan. In so holding, we reject appellant's argument regarding DCFS's failure to notify counsel of the scheduled appointments.

Having reviewed all of appellant's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

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

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[2]113 Nev. 124, 133, 930 P.2d 760, 766 (1997). To the extent that Deck applied the jurisdictional/dispositional standard previously utilized by this court, the decision has been abrogated by this court's recent opinion in Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).