

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO M. I. W.

No. 37672

ERICA J. C.,

Appellant,

vs.

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

Respondent.

**FILED**

**FEB 12 2002**

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court terminating appellant Erica C.'s parental rights. On appeal, Erica argues that: (1) Nevada's standard for the termination of parental rights is impermissibly vague and violates her constitutional right to due process; (2) her due process rights were violated because she received inadequate notice of the termination proceeding as well as inadequate notice under her case plan of what she needed to accomplish in order to avoid the termination of her parental rights; and (3) the district court abused its discretion in reaching its decision terminating her parental rights. We conclude that none of Erica's claims have merit, and we affirm the district court's order terminating Erica's parental rights.

First, Erica asserts that Nevada's best interests of the child/parental fault standard violates the due process provisions of the United States and Nevada Constitutions because the standard is

impermissibly vague and ambiguous. In particular, Erica argues that the portion of the standard under NRS 128.105(1) regarding the child's best interests is unfairly subjective and susceptible to numerous interpretations. We disagree.

As a general rule of statutory interpretation, courts should interpret statutes so as to avoid conflicts with the constitution.<sup>1</sup> Moreover, statutes must be construed as a whole in order to give meaning to all of the statute's provisions.<sup>2</sup> Here, Erica focuses upon the alleged vagueness of NRS 128.105(1), which requires a determination of the child's best interests, but she ignores NRS 128.105(2), which requires an additional finding of parental fault. Before a district court may order the termination of a parent's rights, the court must find both that the termination is in the child's best interests and that the parent is at fault.<sup>3</sup>

Reading both provisions together, we conclude that a parent is provided with a great deal of guidance and notice as to what types of conduct are prohibited. NRS 128.105(2) expressly lists the types of parental fault recognized by the legislature thereby precluding arbitrary or discriminatory enforcement. Therefore, we conclude that Nevada's standard for the termination of parental rights is not impermissibly vague and that the district court's decision in regard to this matter must be affirmed.

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<sup>1</sup>Summit v. State, 101 Nev. 159, 161, 697 P.2d 1374, 1376 (1985); see also State v. Woodbury, 17 Nev. 337, 356, 30 P. 1006, 1012 (1883).

<sup>2</sup>Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990), overruled on other grounds by Calloway v. City of Reno, 116 Nev. 250, 267, 993 P.2d 1259, 1270 (2000).

<sup>3</sup>NRS 128.105.

Second, Erica asserts that her right to due process was violated because she received inadequate notice of the termination proceeding. In particular, Erica argues that both the case plan and the petition for termination were misleading and failed to provide her with detailed notice. We disagree.

This court has recognized that due process requires a clear and definite statement of the allegations of the petition and notice of the hearing and the opportunity to be heard or defend.<sup>4</sup> We conclude that Erica's case plan was sufficiently definite to notify her that she needed to maintain sobriety if she hoped to be reunited with her child because the case plan clearly stated that maintaining sobriety was the overall objective. This conclusion is supported by the fact that in the past Erica acknowledged the need to maintain sobriety, despite having already completed drug rehabilitation programs. Additionally, we conclude that Erica received adequate notice of the termination proceedings because the petition makes specific allegations regarding her conduct.<sup>5</sup> Moreover, Erica appeared at both the preliminary hearing and the actual termination proceeding with her counsel in opposition to the State's petition to terminate her parental rights. Therefore, we conclude that Erica received adequate notice of both the case plan requirements and the

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<sup>4</sup>Matter of Parental Rights of Weinper, 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, 799-800, 8 P.3d 126, 132 (2000).

<sup>5</sup>For instance, the petition alleges that: (1) Erica failed to provide proper parental care; (2) Erica failed to provide proper guidance and support; and (3) the child would be at risk of sustaining serious physical, mental and emotional injury if returned to Erica's care.

termination proceedings to satisfy due process and, accordingly, the decision of the district court must be affirmed.

Finally, Erica asserts that the district court abused its discretion by terminating her parental rights because the State failed to offer substantial evidence of both her own parental fault and of her child's best interests. We disagree.

Under Nevada law, this court will uphold termination orders that are based upon substantial evidence and will not substitute its own judgment for that of the district court.<sup>6</sup> First, we conclude that there was substantial evidence to support a finding that the termination of Erica's parental rights was in her child's best interests in light of Erica's history of relapse and her recent positive drug tests. Second, we conclude that there was substantial evidence to support the district court's finding that Erica is an unfit parent because Erica's recurrent drug use prevented her from complying with her case plan and rendered her unable to care for her child.<sup>7</sup> Finally, we conclude that the evidence of Erica's recurrent drug use and her failure to visit her child also supports a finding of a failure of parental adjustment.<sup>8</sup>

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<sup>6</sup>Kobinski v. State, 103 Nev. 293, 296, 738 P.2d 895, 897 (1987).


<sup>7</sup>See NRS 128.106(4) (directing the district court to consider the parent's excessive use of controlled substances that consistently render the parent unable to care for the child).


<sup>8</sup>As was noted by the district court in its own findings, Erica has been unable to resolve the issue of her drug abuse despite having the assistance of the State and over three years to do so. The conduct that led to her child being placed outside of Erica's home was Erica's drug abuse. Accordingly, it is Erica's drug abuse, more than any other aspect of her conduct, that needed correction before reunification was possible. Erica testified that she was still using drugs approximately four months before the termination proceeding, and Erica's social worker testified that Erica

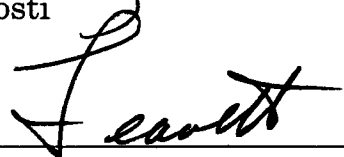
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Based on the above, we conclude that the district court's decision is supported by substantial evidence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Maupin

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division  
Attorney General  
Brigid J. Duffy, Deputy District Attorney General, Las Vegas  
Thomas G. Kurtz  
~~Attorney General~~  
Clark County Clerk

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had tested positive for drugs just two weeks before the termination proceeding.

Although Erica contends otherwise, our review of the record reveals that the district court never concluded that Erica abandoned her child. The district court found that the biological father had abandoned the child, but expressly refrained from making a similar finding in regard to Erica. Instead, the district court identified and relied upon separate grounds of parental fault, namely, unfitness and lack of parental adjustment. Therefore, Erica's claim that the district court erred in this regard is without merit.