IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO K.A.D., C.M.D, C.M.D., J.R.D., R.S.D., AND J.T.D.

MICHELLE L.D. AND MICHAEL J.D., Appellants,
vs.
THE STATE OF NEVADA DIVISION OF CHILD AND FAMILY SERVICES, Respondent.

No. 37942

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating parental rights. The district court found appellants, Michelle L.D. and Michael J.D., to be unfit parents and concluded that the best interests of the couple's six children favored termination. The district court reached its determination after extensively examining the couple's long history of involvement with social services, drug abuse, and domestic violence. We affirm the district court's termination of parental rights.

Parental termination

We will uphold parental termination orders if they are supported by substantial evidence.[1] As we have previously explained, termination of a parent's right to custody of their child is ""tantamount to

[1]See Matter of Parental Rights as to K.D.L., 118 Nev. ___, ___, 58 P.3d 181, 186 (2002) (citing Matter of Parental Rights as to N.J., 116 Nev. 790, 795, 8 P.3d 126, 129 (2000)).

imposition of a civil death penalty.'"'"[2] Consequently, in order to terminate parental rights, a petitioner must prove at trial, by clear and convincing evidence, that (1) termination is in the child's best interests and (2) parental fault.[3] In addition, we will not substitute our own judgment for that of the trial court, which "had all parties before it, observed their demeanor and weighed their credibility, especially in ar area of such sensitivity."[4]

Children's best interests

We conclude that substantial evidence supports the district court's finding that clear and convincing evidence demonstrates that the children's best interests is served by terminating Michelle and Michael's parental rights. The Nevada Legislature has provided that "[t]he continuing needs of a child for proper physical, mental, and emotional growth and development are the decisive considerations in proceedings for termination of parental rights."[5]

After reviewing the record, we conclude that the physical, mental, and emotional growth of the children will best be served by termination. Michelle and Michael's dependence on drugs and alcohol, as well as Michelle's mental health status as a manic-depressive, has allowed the children to grow up in a continuously dangerous environment. Repeated attempts by the Department of Children and Family Services to

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[2]Id. (quoting N.J., 116 Nev. at 795, 8 P.3d at 129) (quoting Drury v. Lang, 105 Nev. 430, 433, 776 P.2d 843, 845 (1989)).

[3]See N.J. at 801, 8 P.3d at 133; see also NRS 128.105.

[4]Carson v. Lowe, 76 Nev. 446, 451-52, 357 P.2d 591, 594 (1960).

[5]NRS 128.005(2)(c).

reunify the children with their natural parents have failed. Any further attempts at reestablishing the family would be futile and would only serve to harm the stability that has been established for these children in their respective foster homes. Further, the individuals who, at the time of the trial, were willing to adopt the children will be able to adequately meet the children's physical, mental, and emotional needs.

Additionally, allowing Michelle and Michael to remain involved in their children's lives would create a foreseeable risk of physical, mental, or emotional harm to the children. Michelle and Michael have a well-documented history of abusing and neglecting their children. For example, one night, one of the children was reported wandering unsupervised on Charleston Boulevard. On another occasion, Michelle hit one of the children on the head with a baby bottle, causing a skull fracture. Through October 1995, caseworkers conducting home visits discovered a home that posed a significant safety risk to the children.

Finally, the record reveals that adopting is a viable option for all of the children Therefore, we conclude that it is in the children's best interests to terminate Michelle and Michael's parental rights and allow adoption procedures to commence.

Parental fault

In addition to considering the children's best interests, parental fault must be established at trial by clear and convincing evidence.[6] We conclude that parental fault was proved by clear and convincing evidence in this case. Parental fault can be established by a finding that "[t]he conduct of the parent or parents was the basis for a

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[6]See K.D.L., 118 Nev. at ___, 58 P.3d at 186.

finding made pursuant to subsection (3) of NRS 432B.393,"[7] or based on a number of enumerated grounds under NRS 128.105(2).[8]

The district court found that Michelle and Michael were unfit parents and unable to adjust their personal behavior to comply with the court-ordered case plans. After reviewing the record below, we conclude that the evidence justifies affirming the district court's decision as to the

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[7]NRS 128.105(2).

[8]NRS 128.105(2) provides in part:

> (a) Abandonment of the child;
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> (b) Neglect of the child;
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> (c) Unfitness of the parent;
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> (d) Failure of parental adjustment;
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> (e) Risk of serious physical, mental or emotional injury to the child if he were returned to, or remains in, the home of his parent or parents;
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> (f) Only token efforts by the parent or parents;
>
> (1) To support or communicate with the child;
>
> (2) To prevent neglect of the child;
>
> (3) To avoid being an unfit parent; or
>
> (4) To eliminate the risk of serious physical, mental or emotional injury to the child; or
>
> (g) With respect to termination of parental rights of one parent, the abandonment by that parent.

element of parental fault based on both (1) parental unfitness and (2) failure of parental adjustment.

(1) Failure of parental adjustment

"Failure of parental adjustment" is defined by statute as a situation that "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 their home."[9] Division personnel repeatedly attempted to reunify the family. However, Michelle and Michael made the conscious decision to willfully ignore two case plans, as well as a host of informal supervisions, since 1994. Therefore, because of a repeated unwillingness to address problems of drug abuse, domestic violence, and lack of parental training, we conclude that they are at fault for "failure of parental adjustment."

(2) Unfitness

An "unfit parent" is defined by statute as "any parent of a child who, by reason of his fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support."[10] Based on the record's detailed history of Michelle and Michael's substance abuse, domestic violence, and lack of parental training, we conclude that the district court did not err in its determination that they were unfit parents.

Michelle and Michael both contend that they are taking rehabilitative steps in their lives that warrant a second chance. Specifically, Michael argues that although the district court was skeptical

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[9]NRS 128.0126.

[10]NRS 128.018.

of his ability to stay off drugs, he has the ability to do so and may achieve this goal through his participation in an inpatient drug treatment program. We find this reasoning to be unpersuasive. Michael began his current inpatient drug treatment program almost two years after it was requested. Michael has also not addressed other issues discussed in his case plan, such as domestic violence or his abusive actions towards the children. Therefore, Michael's rehabilitation attempts, are at best, insufficient, and at worst, too little too late.

As to Michelle, her mental, emotional, and physical status renders her not only unfit to raise her six children, but also raises serious questions as to her own ability to care for herself. Michelle's inability to care for her children has been demonstrated by numerous instances over the years. In 1994, Michelle fractured her son's skull when she threw a baby bottle at his head. In 1995, Michelle refused to take her prescribed Lithium medication to control her mental illness and maintained the home in such an unsafe condition that it posed a significant safety risk to the children. In 1998, Michelle acknowledged that she was continuing to use illegal drugs and that her physical abuse of her sons was not isolated. Finally, in 2000, Michelle tested positive for drugs in both March and April of that year, continued to maintain an unsafe home for the children, and had injured her hand by striking the windshield of the family car in a jealous rage against Michael. Therefore, with Michelle's mental, emotional, and physical status in limbo, her inability to properly function as a fit parent remains a certainty.

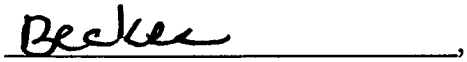
For the foregoing reasons, we conclude that the district court did not err in finding that Michelle and Michael are unfit parents, that they showed a failure of parental adjustment, and that the children's best

interests are served by terminating Michelle and Michael's parental rights. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt



_____, J.
Becker

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
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