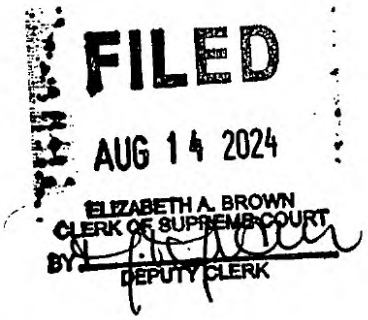
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO: J.W.K., JR.

DAWN A.H.,
Appellant,
vs.
CLARK COUNTY DEPARTMENT OF FAMILY SERVICES AND J.W.K., JR.,
Respondents.

No. 87197



ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating appellant's parental rights as to a minor child. Eighth Judicial District Court, Family Division, Clark County; Stephanie Charter, Judge.

As an initial matter, respondent J.W.K. asserts that this court lacks jurisdiction over this appeal because the notice of appeal was untimely filed. We disagree. Appellant Dawn A.H. timely filed a NRCP 59(e) motion seeking to alter or amend the order terminating her parental rights based on new evidence, which tolled the time to appeal from the order terminating Dawn's parental rights. *See* NRAP 4(a)(4)(C) (providing that the time to appeal is tolled when a party files a motion seeking relief under NRCP 59). NRS 128.090(2) provides that actions to terminate parental rights "are civil in nature and are governed by the Nevada Rules of Civil Procedure." NRCP 59(e) permits a party to file a motion to alter or amend the judgment. While NRS 128.120 provides that a district court "has no power to set aside, change or modify" an order terminating parental rights after it is entered, "[a]n NRCP 59(e) motion does not have to win on the merits to have tolling effect under NRAP 4(a)(4)(C)," *AA Primo Builders, LLC v. Washington*, 126

Nev. 578, 581, 245 P.3d 1190, 1192 (2010). In fact, in determining whether a motion qualifies as a tolling motion, this court looks to whether the motion is in "writing, timely filed, states its grounds with particularity, and requests a substantive alteration of the judgment, not merely the correction of a clerical error, or relief of a type wholly collateral to the judgment." *AA Primo*, 126 Nev. at 585, 245 P.3d at 1195 (alteration in original) (internal quotation marks omitted). We are not persuaded that a timely filed motion seeking substantive relief under NRCP 59(e) does not qualify as a tolling motion merely because it was filed in an action to terminate parental rights, when such actions are governed by the NRCP. *See id.* (explaining that tolling motions should "not be used as a technical trap for the unwary draftsman" (internal quotation marks omitted)). Accordingly, we conclude Dawn's NRCP 59(e) motion tolled the time to appeal and we have jurisdiction over this matter.

To terminate parental rights, the district court must find clear and convincing evidence that (1) at least one ground of parental fault exists and (2) termination is in the child's best interest. NRS 128.105(1); *In re Termination of Parental Rts. as to N.J.*, 116 Nev. 790, 800-01, 8 P.3d 126, 132-33 (2000). On appeal, this court reviews questions of law de novo and the district court's factual findings for substantial evidence. *In re Parental Rts. as to A.L.*, 130 Nev. 914, 918, 337 P.3d 758, 761 (2014).

We conclude substantial evidence supports the district court's parental fault findings that Dawn is an unfit parent, J.W.K. is a neglected child, Dawn has only made token efforts to avoid being an unfit parent or prevent neglect of J.W.K., and that Dawn has failed to adjust the circumstances that led to J.W.K.'s removal. NRS 128.105(1)(b)(2), (3), (4), (6); NRS 128.014(1) (providing that a neglected child is one "[w]ho lacks the

proper parental care by reason of the fault or habits of his or her parent"); NRS 128.018 (explaining that an unfit parent is one who "by reason of the parent's fault or habit or conduct toward the child or other persons, fails to provide such child with proper care"). Dawn argues that the district court could not apply the presumptions from NRS 128.109 with respect to token efforts and failure to adjust because the motion to terminate parental rights was filed before J.W.K. had been out of Dawn's care for 14 consecutive months. We disagree because at the time of the trial, J.W.K. had been out of Dawn's care for more than 14 consecutive months and Dawn had failed to complete her case plan within six months.[1] NRS 128.109(1)(a) (providing that it is presumed that a parent has only made token efforts when the child has been out of the parent's care for 14 of 20 consecutive months); NRS 128.109(1)(b) (providing that it is presumed that a parent has failed to adjust the circumstances leading to a child's removal if the parent has not substantially complied with the parent's case plan within six months). Additionally, substantial evidence demonstrates that Dawn did not rebut those presumptions.

The record shows that J.W.K. was removed from Dawn's care when he was born substance exposed. Dawn testified that she had been using substances for 14 years, had never held a full-time job, and did not have stable housing. For the majority of the case, Dawn failed to stay in contact with respondent Department of Family Services (DFS) and failed to take drug tests or tested positive for drugs. While Dawn began a substance abuse treatment program in January 2023, at the time of trial, she had been

[1]To the extent Dawn argues that she was never given a case plan, this argument is belied by the record as Dawn conceded at trial that she was provided a case plan in March 2022.

sober for less than four months and was still residing in a transition facility, meaning she had yet to maintain her sobriety outside of a substance abuse program. Dawn's sobriety is commendable, but does not overcome the NRS 128.109 presumptions or demonstrate an ability to provide proper care for J.W.K. in light of her addiction. Further, she failed to comply with the requirements of her case plan to complete a mental health assessment or have stable housing and income. Thus, substantial evidence supports the district court's parental fault findings of neglect, parental unfitness, token efforts, and parental adjustment.[2]

Further, we conclude that substantial evidence supports the district court's finding that termination of Dawn's parental rights was in J.W.K.'s best interest. NRS 128.005(2)(c) ("The 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."). The court properly applied the presumption that termination was in J.W.K.'s best interest as J.W.K. had been out of Dawn's care for 14 consecutive months at the time of trial. NRS 128.109(2). Once the presumption applied, Dawn had the burden of proof to overcome the presumption. *See In re Parental Rts. as to J.D.N.*, 128 Nev. 462, 471, 283 P.3d 842, 848 (2012) (explaining that once the NRS 128.109 presumptions apply, the parent can rebut that presumption by a preponderance of the evidence). Evidence of her substance abuse treatment and any argument that further services would assist in the return of J.W.K. to her care do not

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[2]Because only one ground of parental fault is required to support the termination of parental rights, NRS 128.105(1)(b) (requiring a finding of at least one ground of parental fault), it is unnecessary for us to review the district court's additional finding of parental fault.

overcome the presumption. For the majority of J.W.K.'s life, Dawn did not consistently visit J.W.K. Additionally, J.W.K. has resided with his foster family for the majority of his life, he is bonded to them, and they wish to adopt him. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Stiglich

_____, J.
Pickering

_____, J.
Parraguirre

cc: Hon. Stephanie Charter, District Judge, Family Division
The Law Office of Dan M. Winder, P.C.
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Clark County District Attorney/Juvenile Division
Legal Aid Center of Southern Nevada, Inc.
Eighth District Court Clerk