

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO: K.N.D.M.; K.E.S.M.; K.E.M.M.; AND K.M.K.M., MINORS.

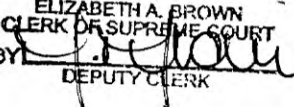
No. 84605

NINOTCHKA DONEA M.,  
Appellant,  
vs.

CLARK COUNTY DEPARTMENT OF FAMILY SERVICES; K.N.D.M.; K.E.S.M.; K.E.M.M.; AND K.M.K.M.,  
Respondents.

FILED

OCT 23 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

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

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 Rights 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 Rights as to A.L.*, 130 Nev. 914, 918, 337 P.3d 758, 761 (2014).

Our review here was complicated by an insufficient district court order as, in many instances, the district court failed to provide relevant or sufficient support for its findings or applied the wrong legal analysis. For example, the district court found that appellant Ninotchka

M. was an unfit parent because she had failed to timely adjust the circumstances that led to the children's removal, but a failure to adjust is a separate parental-fault ground so such a finding, on its own, does not support a finding of parental unfitness.

Despite the insufficiency of the district court's order, there is substantial evidence in the record supporting the district court's parental-fault findings that Ninotchka made only token efforts and poses a risk of serious injury to the children if they are returned to her care. NRS 128.105(1)(b)(5), (6). Substantial evidence supports the court's finding that Ninotchka presumptively only made token efforts to care for the children as they were out of her care for 21 consecutive months at the time of the termination trial. NRS 128.109(1)(a) (providing that it is presumed the parent has only made token efforts to care for the child if the child has resided outside of the parent's care for 14 of any 20 consecutive months). Even if the presumption did not apply, there is substantial evidence in the record of both token efforts and a risk of serious injury posed to the children if they were returned to Ninotchka's care.

Ninotchka's older children had been removed from the home twice before the underlying case based on concerns regarding her inability to care for the children in light of her substance abuse issues. Ninotchka, herself, testified that she had struggled with substance abuse for over eight years. At the time of the underlying removal, the family was homeless and Ninotchka conceded she was using illegal substances. Despite Ninotchka's numerous involvements with respondent Clark County Department of Family Services (CCDFS) over a seven-year period, Ninotchka failed to demonstrate an intent to address her substance abuse issues until after CCDFS moved to terminate her parental rights. And while Ninotchka had

tested negative for substances for the few months leading up to trial, the district court did not find her testimony regarding her last positive test credible. Additionally, even though CCDFS had ongoing concerns of domestic violence between Ninotchka and the children's father, Ninotchka did not remove the father from her apartment lease until four months after CCDFS's motion to terminate her parental rights. While she testified she planned to divorce him, they were still married at the time of the trial and the district court concluded Ninotchka was not credible regarding their relationship. Although Ninotchka did make some strides to comply with her case plan, she failed to timely make substantial and meaningful changes that would alleviate the risk posed to the children if they were returned to her care. Thus, we conclude substantial evidence supports the district court's parental fault findings of token efforts and risk of serious injury.<sup>1</sup>

Further, we conclude that substantial evidence supports the district court's finding that termination of Ninotchka's parental rights was presumptively in the children's best interest. NRS 128.109(2) (providing that it is presumed to be in the child's best interest to terminate parental rights if the child has resided out of the parent's care for 14 of any 20 consecutive months). Notwithstanding the unrebutted best-interests presumption, substantial evidence also supports the district court's finding that additional services were unlikely to bring about lasting parental change enabling the return of the children to Ninotchka within a

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<sup>1</sup>Because only one ground of parental fault is required to support the termination of parental rights, *see* 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 other findings of parental fault.

predictable period. See NRS 128.107(4) (requiring the court to consider this factor when the child is not in the physical custody of the parent). Additionally, the district court properly considered the factors laid out in NRS 128.108, and substantial evidence supports the court's findings that the foster family, which hopes to adopt the children, (1) provides stability and structure for the children that Ninotchka is unable to provide, considering the ongoing risk of re-removal they face if placed with her; (2) the foster family is in a better position to address any special needs and emotional and behavioral challenges the children have; and (3) the children have bonded with the foster family. Thus, substantial evidence supports the district court's finding that termination was in the children's best interest. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.  
Stiglich

Cadish, J.  
Cadish

Pickering, J.  
Pickering

Herndon, J.  
Herndon

Lee, J.  
Lee

Parraguirre, J.  
Parraguirre

Bell, J.  
Bell

cc: Hon. Stephanie Charter, District Judge, Family Court Division  
The Grigsby Law Group  
Legal Aid Center of Southern Nevada, Inc.  
Clark County District Attorney/Juvenile Division  
Greenberg Traurig, LLP/Las Vegas  
Eighth Judicial District Court Clerk