IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF S.A.M.C. AND R.L.M., MINORS.

NATALIE JOY M.,
Appellant,
vs.
THE STATE OF NEVADA, DEPARTMENT OF HUMAN RESOURCES, DIVISION OF CHILD AND FAMILY SERVICES,
Respondent.

No. 38099

FILED

OCT 23 2002

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

ORDER OF REVERSAL

This is an appeal of a district court order terminating appellant Natalie M.'s parental rights to her minor children.

Natalie contends that the district court erred in granting the petition to terminate her parental rights because the Division of Child and Family Services did not prove either basis of parental fault or that termination was in the children's best interests. We agree that the district court abused its discretion in determining that parental fault was proven by clear and convincing evidence.[1]

Termination of parental rights is "an exercise of awesome power."[2] We have previously characterized the severance of the parent-

[1]Having concluded reversal is warranted on this ground, we need not address Natalie's other claims of error.

[2]Matter of Parental Rights as to N.J., 116 Nev. 790, 795, 8 P.3d 126, 129 (2000) (quoting Smith v. Smith, 102 Nev. 263, 266, 720 P.2d 1219, 1220 (1986), overruled on other grounds by Matter of N.J., 116 Nev. 790, 8 P.3d 126).

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child relationship as "tantamount to imposition of a civil death penalty," but will uphold terminations based on substantial evidence.[3] The district court must determine, by clear and convincing evidence, that there is parental fault and that the termination of parental rights is in the best interests of the child.[4]

NRS 128.0126 provides that when a parent is unable or unwilling to correct the circumstances, conduct or conditions that led to the placement of his or her child outside of the home, there is a failure to adjust. However, we have previously noted that "[t]he parent . . . must be shown to be at fault in some manner . . . [and] cannot be judged unsuitable by reason of failure to comply with requirements and plans that are . . . impossible . . . to abide by."[5] NRS 128.109(1)(b) provides that if a parent fails to comply substantially with the case plan within six months after it was entered into, there is a presumption that the parent has failed to adjust.

Here, the district court concluded that Natalie had failed to adjust within a reasonable time. This conclusion was based on Natalie's failure to complete the case plan within six months of signing it. However, Natalie was incarcerated on a probation violation and had been sentenced to a minimum of twelve months when she entered into the plan. The plan itself called for Natalie to reach certain goals within specified time frames

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[3]Matter of 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)).

[4]NRS 128.105.

[5]Champagne v. Welfare Div., 100 Nev. 640, 652, 691 P.2d 849, 857 (1984), overruled on other grounds by Matter of N.J., 116 Nev. 790, 8 P.3d 126.

after her release from custody. The Division acknowledged that the plan was impossible to complete while Natalie was in prison, and that she had complied with as much of the case plan as was possible given her incarceration. Since the plan was impossible to complete — despite theNatalie's best efforts — her failure to complete the plan is not sufficient grounds for terminating parental rights.[6]

In addition, less than six months after Natalie agreed to the plan, the district court found that the Division was not required to make reasonable efforts to reunify her with her children pursuant to NRS 432B.393(3)(d).[7] Since this change occurred within the first six months of the plan, the Division could no longer rely on failure to complete the plan, and the statutory presumption, as a ground for termination.

In its decision, the district court also mentioned that Natalie had not done much for her children prior to her incarceration and "was an unfit parent." However, the district court did not make any findings of fact or reach any conclusions of law regarding Natalie's unfitness, and the record is not clear on this issue. The Division raised unfitness as a ground for termination when filing the petition to terminate Natalie's rights and contends that the district court properly concluded that she was unfit. We disagree.

NRS 128.106 provides, in relevant part, that "[i]n determining neglect by or unfitness of a parent, the court shall consider" whether a

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[6]See Champagne, 100 Nev. at 652, 691 P.2d at 857; see also Matter of Parental Rights as to J.L.N., 118 Nev. ___, ___ P.3d ___, (Adv. Op. No. 65, October 18, 2002).

[7]Reasonable efforts to reunite need not be pursued if a parent's rights involving a sibling have been previously terminated.

parent's use of liquor or controlled substances "renders the parent consistently unable to care for the child," and "[c]onviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care."

Here, the Division contends unfitness was properly found because it "is undisputed that [Natalie] remains incarcerated with a felony DUI Manslaughter" and that "there can be no argument that a parent who drives under the influence . . . poses an imminent threat to the health and safety of any child who may be with the parent." Further, the Division argues that the termination of Natalie's rights to an older child and her inability to care for her other living children support a finding of unfitness as a ground for termination of her rights.

However, this argument fails to consider that the district court specifically found that the Division had failed to prove the nature of Natalie's conviction for the 1996 accident. While NRS 129.106(6) requires that the district court consider convictions in determining unfitness, this requirement only applies when the convictions are for felonies that "indicate the unfitness of the parent to provide adequate care." Since the district court had little or no evidence as to the nature of the conviction, it could not have determined Natalie's unfitness as a parent. Additionally, we conclude that a felony conviction for driving while intoxicated does not, in and of itself, indicate that a parent is unfit. Here, there was no evidence that Natalie had ever been intoxicated while driving with her children in the car. There was also testimony that Natalie took the bus to and from work. There was also little or no evidence presented that the conviction evidenced a substance abuse problem with alcohol.

Finally, although evidence of Natalie's inability to care for her other children might have served as compelling evidence of unfitness, the record here does not include substantial evidence to support such a conclusion. The record does not indicate the reason for the prior termination or the reasons that led to Natalie's children being cared for by others. The Division did not offer any specific evidence to link these other placements to Natalie's alleged unfitness.

We therefore conclude that parental fault is not supported by substantial evidence in the record and that the district court abused its discretion in granting the termination petition.[8] Accordingly, we

ORDER the judgment of the district court REVERSED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

[8]Given our conclusion on this issue, we need not reach Natalie's claims that the district court erred in concluding that termination of her rights was in her children's best interests or that her due process rights were violated.

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division
Buche & Garcia
Attorney General/Carson City
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Clark County Clerk