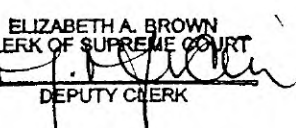


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: PARENTAL
RIGHTS AS TO A.M.M.; K.W.H.; L.G.W.
AND J.S.P., JR.

KIA W.,
Appellant,
vs.
CLARK COUNTY DEPARTMENT OF
FAMILY SERVICES; A.M.M.; K.W.H.;
L.G.W.; AND J.S.P., JR.,
Respondents.

No. 87133

FILED
SEP 12 2024
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 four minor children. Eighth Judicial District Court, Family Division, Clark County; David S. Gibson, Jr., Judge.

Appellant Kia W. is the mother of respondents A.M.M., K.W.H., L.G.W., and J.S.P., Jr. Respondent Clark County Department of Family Services (DFS) removed A.M.M. and K.W.H. from Kia's care in December 2018 after Kia's boyfriend Jermaine intentionally burned K.W.H. L.G.W. was then removed from Kia's care at birth. Kia eventually engaged in case plan services and by July 2020, all three children were returned to Kia's care. In August 2020, the three children were removed again after a domestic violence incident between Kia and Jermaine. After Kia re-engaged in services and informed DFS she was no longer communicating with Jermaine, the children were returned to Kia in February 2021. However, the children were once again removed from Kia's care in May 2021 when J.S.P., Jr. was born. Two years later, the district court terminated Kia's parental rights. Kia now appeals.

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 children’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, we review 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). Substantial evidence is that which “a reasonable person may accept as adequate” to support a conclusion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Further, we will not “reweigh the evidence on appeal or substitute our judgment for” that of the district court. *Matter of T.M.R.*, 137 Nev. 262, 267, 487 P.3d 783, 789 (2021).

Kia argues that the district court erred in terminating her parental rights because substantial evidence does not support the district court’s findings of parental fault and that termination would be in the children’s best interest. We disagree.

First, we conclude that substantial evidence supports the district court’s parental fault findings of neglect, unfitness, and failure of parental adjustment. The record also demonstrates that reasonable efforts were waived pursuant to NRS 432B.393(3). See NRS 128.105(1)(b) (providing parental fault can be established by an order waiving reasonable efforts). Substantial evidence supports the district court’s findings of neglect and unfitness. See NRS 128.105(1)(b)(2), (3); NRS 128.014(1) (explaining that a child is neglected when the child “lacks proper parental care by reason of the fault or habits of his or her parent”); NRS 128.018 (defining an “unfit parent” as a parent “who, by reason of the parent’s fault or habit or conduct . . . fails to provide [their] child with proper care,

guidance and support”). The record shows that Kia has repeatedly demonstrated a lack of protective capacity toward the children, especially in regard to Jermaine’s presence; that Kia’s emotional issues negatively impact her decision-making; that Kia was emotionally cruel to A.M.M.; that Kia fails to understand the children’s special needs; and that K.W.H. suffered a physical injury resulting in substantial bodily harm as the result of abuse or neglect while in Kia’s care. *See* NRS 128.106 (providing a non-exhaustive list of conditions that “may diminish suitability as a parent,” which the district court must consider in determining neglect by or unfitness of a parent). Moreover, DFS’s inability to reunite the family after the children had been in foster care for nearly two years was clear and convincing evidence of parental unfitness. *See* NRS 128.106(1)(h).

Substantial evidence also supports the district court’s finding of parental fault based on Kia’s failure to adjust the circumstances that led to the children’s removal. *See* NRS 128.105(1)(b)(4); NRS 128.0126 (providing that failure of parental adjustment “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 of their home”). A parent’s failure to adjust may be evidenced by the parent’s failure to substantially comply with the case plan to reunite the family within six months after the child has been placed outside the home. NRS 128.109(1)(b). Kia’s plan required consistent, weekly psychotherapy, which Kia did not engage in. Further, the record also demonstrates that despite the services Kia did engage with, Kia has not made the behavioral changes necessary to provide proper care for the children, especially in terms of enhancing her protective capacity, prioritizing the children’s needs, and understanding the children’s trauma.

See In re Parental Rts. as to K.D.L., 118 Nev. 737, 747-48, 58 P.3d 181, 187-88 (2002) (noting that appellant's failure to make behavioral changes necessary to the case plan was evidence of failure of parental adjustment). While Kia testified at the trial that she was no longer in a relationship with Jermaine, she also testified regarding domestic violence incidents between herself and her new boyfriend. Therefore, substantial evidence supports the district court's finding that Kia failed to adjust the circumstances that led to the children's removal.¹

Finally, we conclude that substantial evidence supports the district court's finding that termination was in the children's best interest.² *See* NRS 128.105(1) ("The primary consideration in any [termination proceeding is] whether the best interests of the child will be served by the termination."). Based on the length of time the children were outside of Kia's care, the district court properly applied the statutory presumption that termination was in the children's best interest. *See* NRS 128.109(2) (providing that termination of parental rights is presumed to be in a child's best interest if that child has been placed outside of the parent's home for 14 of any consecutive 20 months). We further conclude that the district court properly found that Kia failed to rebut that presumption. *See In re*


¹Because 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 finding of parental fault.


²Kia argues that termination was not in the best interests of the children because it will separate them from their newly born half-sibling. But Kia also testified that the child is not in Kia's custody so it is unclear how maintaining her parental rights will ensure a relationship between all the children. Further, this is only one factor to consider when determining what is in the children's best interest.

J.D.N., 128 Nev. 462, 474, 283 P.3d 842, 850 (2012) (holding that after the district court determines that NRS 128.109's presumptions apply, the burden is on the parent to present evidence relating to the NRS 128.107 factors that would rebut those presumptions).

Children deserve stability and despite the extensive services provided to Kia to facilitate a reunion with the children, reunification has not been possible, and the district court found that it was unlikely that any additional services would lead to reunification. *See* NRS 128.107 (providing considerations for the district court in determining whether to terminate parental rights when the parent does not have physical custody of the child). The record further demonstrated that Kia did not understand the trauma suffered by the children. And as the district court recognized, the children have been living with their respective foster families for most of their lives, are thriving in their care, are fully integrated into their foster families, and their foster parents are committed to adopting them. *See* NRS 128.108 (listing considerations for the court in termination proceedings where the child has been placed in a foster home with the ultimate goal of adoption). Additionally, J.S.P., Jr. has long-term, special medical needs and has been placed with foster parents who are pediatric nurses and are able and willing to meet those needs. Thus, substantial evidence supports the district court's findings that terminating Kia's parental rights was in the children's best interests. Based upon the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

cc: Hon. David S. Gibson, Jr., District Judge
Ethan Kottler
Henderson City Attorney
Clark County District Attorney/Juvenile Division
The Gage Law Firm, PLLC
Eighth District Court Clerk