IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO A.J.B., A MINOR.

EDDIE J.B.,
Appellant,
vs.
CLARK COUNTY DEPARTMENT OF FAMILY SERVICES; AND A.J.B., A MINOR,
Respondents.

No. 85539

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order terminating appellant's parental rights as to a minor child. Eighth Judicial District Court, Family Division, Clark County; Frank P. Sullivan, Judge.

Respondent Clark County Department of Family Services (DFS) removed respondent A.J.B. from appellant Eddie B.'s custody in October 2019 after a social worker reported Eddie was acting in an erratic and threatening manner. DFS adopted a case plan requiring Eddie to address his violent behaviors and substance use, obtain stable housing and employment, and demonstrate an ability to provide for A.J.B.'s basic needs. After nearly three years, the district court granted DFS's motion to terminate Eddie's parental rights, finding three grounds of parental fault (unfitness, failure of parental adjustment, and token efforts) and that termination was in A.J.B.'s best interest. Eddie 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 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, 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 the district court's." *Matter of T.M.R.*, 137 Nev. 262, 267, 487 P.3d 783, 789 (2021).

Eddie first argues that the district court erred in terminating his parental rights because substantial evidence does not support the district court's findings of parental fault and that termination would be in A.J.B.'s best interest. We disagree.

We conclude that substantial evidence supports the district court's parental fault finding of unfitness. *See* NRS 128.105(1)(b)(3); NRS 128.018 (defining an "[u]nfit 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 demonstrates that Eddie continued to use methamphetamines throughout the underlying proceedings and that Eddie was arrested on domestic violence charges for an incident that took place less than a month before the termination trial began. *See In re N.J.*, 125 Nev. 835, 845, 221 P.3d 1255, 1262 (2009) ("What constitutes being unfit can vary from case to case but generally includes continued drug use, criminal activity, domestic violence, or an overall inability to provide for the child's physical, mental or emotional health and development." (internal quotation marks omitted)). The district court also found that Eddie's attempts to deny or minimize his substance use and domestic violence issues were not credible. *See In re J.D.N.*, 128 Nev. 462,

477, 283 P.3d 842, 852 (2012) (noting that the district judge "is in [the] better position to weigh the credibility of witnesses"). Moreover, DFS was unable to reunite Eddie and A.J.B. after nearly three years. *See* NRS 128.106(1)(h).

Substantial evidence also supports the district court's finding of parental fault based on Eddie's failure to adjust the circumstances that led to A.J.B.'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"). Eddie failed to substantially complete the case plan in the three years the matter was pending. *See* NRS 128.109(1)(b) (providing that a parent's failure to complete a case plan within six months may be evidence of a failure to adjust). Eddie's case plan required that Eddie address his substance use issues. But, after completing Westcare in-patient treatment, Eddie failed to engage in outpatient treatment, failed to submit to numerous drug tests, and tested positive for methamphetamines during the termination proceedings. Eddie's case plan also required that he address his violent behaviors, but the record demonstrates that he did not engage in domestic violence treatment and had two pending domestic battery charges at the time of the termination trial. Moreover, Eddie consistently refused to take responsibility and minimized the conditions that led to A.J.B. being removed from Eddie's care. Therefore, substantial evidence supports the district court's finding that Eddie failed to adjust the circumstances that led to A.J.B.'s removal.

Additionally, substantial evidence supports the district court's finding of parental fault based on token efforts to avoid being an unfit

parent. NRS 128.105(1)(b)(6)(III). Because A.J.B. resided outside of Eddie's care for more than 14 of 20 consecutive months, the district court properly applied the statutory presumption that Eddie had only engaged in token efforts to avoid being an unfit parent. *See* NRS 128.109(1)(a) (providing that it is presumed that a parent has only made token efforts when the child has resided outside of the parent's care for more than 14 of 20 consecutive months). And substantial evidence supports the district court's finding that Eddie did not rebut that presumption. *See In re Parental Rts. as to D.R.H.*, 120 Nev. 422, 432-33, 92 P.3d 1230, 1236-37 (2004) (concluding that the presumption of token efforts was not rebutted where the parents had failed to adequately address their drug and anger management problems despite being provided extensive services).

We conclude substantial evidence also supports the district court's finding that termination was in A.J.B.'s best interest. *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 A.J.B. was outside of Eddie's care, the district court properly applied the statutory presumption that termination was in A.J.B.'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). And substantial evidence supports the district court's finding that Eddie did not rebut that presumption. Despite the services provided to Eddie to facilitate a reunion with A.J.B., Eddie has not availed himself of them, and Eddie has made minimal efforts to address his substance use and domestic violence issues or obtain stable housing and employment. *See* NRS 128.107 (providing considerations for the district court in determining

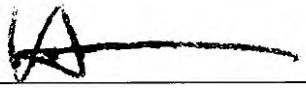
whether to terminate parental rights when the parent does not have physical custody of the child). Additionally, it is unlikely that additional services would lead to reunification within a predictable period. NRS 128.107(4). The record also shows that A.J.B. is bonded to the prospective adoptive family. And the record shows that family would allow A.J.B. to maintain a relationship with the current foster family, with whom A.J.B. is very close. That relationship would not be possible if A.J.B. were returned to Eddie's custody. Thus, substantial evidence supports the district court's findings that terminating Eddie's parental rights was in A.J.B.'s best interests.

Eddie also raises several additional arguments, all of which lack merit. Eddie argues that he received ineffective assistance of counsel. A party defending a petition to terminate parental rights has a right to effective assistance of counsel only when there is a constitutional right to counsel. *See In re Parental Rts. as to N.D.O.*, 121 Nev. 379, 384, 115 P.3d 223, 226 (2005). And we have held that whether there's a constitutional right to counsel in termination proceedings depends on "a case-by-case determination of whether due process demands the appointment of counsel." *Id.* at 383, 115 P.3d at 225. Here, we conclude that due process did not demand the appointment of counsel given that the case was not complex, did not involve expert testimony, and no other evidence shows that Eddie could not represent himself. *See id.* at 382-86, 115 P.3d at 225-27 Eddie thus had no right to the effective assistance of counsel.

Eddie's arguments challenging the termination of A.J.B.'s mother's parental rights are irrelevant. The mother is not a party to this appeal, and her appeal has already been resolved. *See Matter of A.J.B.*, No. 84130, 2022 WL 17829806 (Nev. Dec. 15, 2022) (Order of Affirmance).

Finally, to the extent Eddie argues the district court was biased, Eddie waived that argument by failing to move to disqualify the district court judge below. *See Brown v. Fed. Sav. & Loan Ins. Corp.*, 105 Nev. 409, 412, 777 P.2d 361, 363 (1989) (explaining that a party waives the issue of disqualification on appeal if the party does not request disqualification within the time limitations set by NRS 1.235). Further, the record does not reflect any judicial bias.[1] Based upon the foregoing, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Herndon

_____, J.
Lee

_____, J.
Bell

cc: Chief Judge, Eighth Judicial District Court
Department O, Family Division, Eighth Judicial District Court
Eddie J. B.
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Legal Aid Center of Southern Nevada, Inc.
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk

[1]Insofar as Eddie raises other arguments that are not specifically addressed herein, we have considered the same and conclude that they do not warrant a different result. We also deny the motion for new trial that Eddie filed on October 4, 2024.