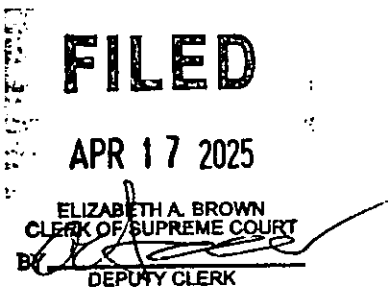
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS OF: G.V., A MINOR CHILD

MIKE V.,
Appellant,
vs.
ALEXANDREA P.,
Respondent.

No. 89089



ORDER OF REVERSAL AND REMAND

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; Heidi Almase, Judge.

Appellant Mike V. and respondent Alexandrea P. are the natural parents of minor child G.V. In 2021, Alexandrea was granted sole legal and physical custody of G.V. In early February 2023, Mike moved to set aside the custody order; later that month, Alexandrea filed a petition to terminate Mike's parental rights. In late April 2023, Mike's motion to set aside the custody order was denied. From September to December 2023, Mike was incarcerated. Upon his release from custody, Mike filed a request for mediation so he could visit with G.V, which was denied. In May 2024, the district court conducted an evidentiary hearing on Alexandrea's petition, and in July 2024, the district court granted that petition. Mike appeals.

Mike first argues that the district court abused its discretion by not appointing counsel to represent him in the underlying proceedings. As

Mike concedes, we have held there is no absolute right to counsel in parental rights termination proceedings. *See In re Parental Rts. as to N.D.O.*, 121 Nev. 379, 383-84, 115 P.3d 223, 225-26 (2005). And while NRS 128.100 provides that "the court may appoint an attorney" for a parent in termination proceedings, the statute does not require the district court to ask a parent if they would like counsel appointed. *See* NRS 128.100(3) ("If the parent or parents of the child desire to be represented by counsel, but are indigent, the court may appoint an attorney for them."). Because Mike did not request counsel, the district court was not required to conduct a due process analysis to determine whether counsel should be appointed to represent Mike. *See In re N.D.O.* 115 Nev. at 384, 115 P.3d at 226 (explaining that courts must conduct a due process analysis to determine whether that demands a parent to be appointed counsel under NRS 128.100). Thus, we conclude the district court did not abuse its discretion by not appointing Mike counsel.

Mike also challenges the district court's substantive decision to terminate Mike's parental rights. 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).

Parental Fault

The district court found four parental fault grounds: abandonment, unfitness, "failure to support," and token efforts. None are supported by the record.

Abandonment

The district court found that Mike abandoned G.V. because Mike had not seen G.V. for more than six months at the time of the termination trial and Mike was unable to rebut the statutory presumption of abandonment. NRS 128.012 defines "abandonment of a child" as "any conduct . . . which evinces a settled purpose on the part of [a] parent[ ] to forego all parental custody and relinquish all claims to the child." NRS 128.012(1). "Intent is the decisive factor in abandonment and may be shown by the facts and circumstances." *In re Parental Rts. of Montgomery*, 112 Nev. 719, 727, 917 P.2d 949, 955 (1996), *superseded by statute on other grounds as stated in In re N.J.*, 116 Nev. at 798-99, 8 P.3d at 132. Although NRS 128.012 provides a rebuttable presumption of abandonment when a parent "leave[s] the child in the care and custody of another without provision for the child's support and without communication for a period of 6 months," NRS 128.012(2), we have held that the presumption does not apply when the district court ordered the child be placed with the other parent. *See Matter of L.R.S.*, 140 Nev., Adv. Op. 62, 555 P.3d 1175, 1181 (2024) (concluding that the district court erred by applying the presumption of abandonment where the court had ordered the children to be placed in the other parent's custody).

Even if the presumption did apply, the record demonstrates that Mike rebutted it. In particular, although Mike had not seen G.V. since late 2022, he made consistent efforts to see G.V. throughout 2023, including seeking to set aside the custody order and moving for mediation immediately upon release from incarceration, all of which were opposed by Alexandrea and ultimately denied. Thus, substantial evidence does not support the district court's finding that Mike abandoned G.V., as Mike's

conduct did not show a settled purpose to relinquish all claims to his child. *See Matter of L.R.S.*, 140 Nev., Adv. Op. 62, 555 P.3d at 1181 (noting that "a pro se and indigent parent's inability to navigate the judicial system cannot be used as support for the finding of abandonment"); *see also In re Parental Rts. as to Q.L.R.*, 118 Nev. 602, 606-08, 54 P.3d 56, 58-60 (2002) (explaining that incarceration alone does not establish an intent to abandon a child).

Unfitness

The district court also found that Alexandrea demonstrated clear and convincing evidence of unfitness due to Mike's criminal history and substance abuse issues. 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, guidance, and support." NRS 128.018. The court primarily based its unfitness finding on Alexandrea's testimony about domestic violence incidents that did not involve a child and did not result in a conviction. Although the nature of a crime is relevant when determining the best interests of the child, *see In re Parental Rights as to K.D.L.*, 118 Nev. 737, 746, 58 P.3d 181, 187 (2002), NRS 128.106 only lists felony convictions and cruel or abusive conduct toward a child as relevant considerations in assessing unfitness based on a parent's violent or criminal history. *See* NRS 128.106(1)(b), (f). Additionally, we have explained that a parent's "unfitness [must] be severe and persistent and such as to render the parent *unsuitable* to maintain the parental relationship." *Champagne v. Welfare Div. of Nev. State Dep't of Hum. Res.*, 100 Nev. 640, 648, 691 P.2d 849, 855 (1984), *superseded by statute on other grounds, as stated in In re N.J.*, 116 Nev. 790, 8 P.3d 126 (2000). Here, even crediting Alexandrea's testimony as true, it does not establish that Mike's involvement in the

criminal justice system was so severe and persistent as to render Mike unsuitable to maintain a parent-child relationship with G.V., nor does it demonstrate that it has caused Mike to be consistently unable to care for G.V.

There is also no evidence that Mike's admitted struggles with substance abuse consistently led to Mike being unable to care for G.V. Mike testified that, at the time of trial, he had been sober for almost a year. Mike also testified that, during the time he was alleged to have been abusing substances, he had been able to maintain employment and provide items for G.V., including an extended period when Mike had sole custody of G.V. without Alexandrea's assistance. Thus, substantial evidence does not support the district court's finding of unfitness, as Alexandrea did not show with clear and convincing evidence that Mike's criminal history and struggles with substance abuse rendered Mike an unfit parent.

Failure to Support

The district court also found that Alexandrea had demonstrated parental fault due to Mike's "failure to support." While Mike's limited financial support for G.V. was a proper consideration for the parental fault grounds of unfitness or token efforts, a parent's "failure to support" a child is not an enumerated ground of parental fault under NRS 128.105(1)(b). Indeed, in discussing "failure to support," the district court's order cites only to NRS 128.014(2), which addresses neglect, and NRS 128.106(1)(e), which lists considerations for assessing parental neglect or unfitness. And the district court found that Alexandrea had *not* demonstrated the parental fault ground of neglect. Thus, we conclude that the district court erred by finding parental fault due to a "failure to support."

Token Efforts

Finally, the district court found that Alexandrea had established the parental fault ground of token efforts based on Mike's limited financial support and minimal efforts to see or communicate with G.V.[1] *See* NRS 128.105(1)(b)(6) (explaining that "token efforts by the parent . . . [t]o support or communicate with the child" is a ground of parental fault for purposes of terminating parental rights). Mike's efforts to see and communicate with G.V. were restricted by the district court's custody order and frustrated by Alexandrea's refusal to allow visitation. As to financial support, Mike testified that he frequently purchased items for G.V., including while working out of state, and that Mike solely provided for G.V.'s needs for an extended period. The district court gave "limited weight" to this testimony, citing concern with Mike's failure to provide receipts documenting any purchases. The district court seems to have misplaced the burden, as it is the moving party that has the burden to establish grounds of parental fault, so Mike's failure to provide receipts could not meet Alexandrea's burden of demonstrating Mike failed to make token efforts to support G.V. *See In re A.J.G.*, 122 Nev. at 1423, 148 P.3d at 762 (explaining that the moving party bears the burden to prove, by clear and convincing evidence, that termination is warranted); *cf. Matter of L.R.S.*, 140 Nev., Adv. Op. 62, 555 P.3d at 1182 (rejecting argument that a failure to pay child support alone is sufficient to support a finding of neglect

[1]While Alexandrea argues Mike conceded token efforts by not challenging it on appeal, Mike does challenge the district court's decision to restrict Mike's ability to produce evidence of his efforts to financially support G.V.

warranting termination of parental rights, particularly where the "the children were thriving and had all their needs met").

Best Interests

We need not address the parties' arguments regarding G.V.'s best interests, given our decision with respect to the findings of parental fault. We note, however, that the district court based its best interest conclusion on its finding of multiple grounds of parental fault. We remind the district court that the best interests of the child must be supported by more than just findings of parental fault. *See Sernaker v. Ehrlich*, 86 Nev. 277, 279, 468 P.2d 5, 6 (1970) (explaining that the primary consideration in termination of parental rights proceedings "is whether or not the termination of parental rights is in the best interest of the child"); *see also In re N.J.*, 116 Nev. at 803, 8 P.3d at 134 (instructing the district court to "consider whether the best interests of the child would be served by the termination, coupled with considerations of whether parental fault exists").

Having concluded that the district court erred in finding grounds of parental fault, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Herndon

_____, J.
Bell

_____, J.
Stiglich

cc: Hon. Heidi Almase, District Judge, Family Division
Leavitt Law Firm
Mike V.
Eighth District Court Clerk