IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO T.L.M.

TODD D. M.,
Appellant,
vs.
DAWN L.,
Respondent.

No. 38314



ORDER OF AFFIRMANCE

This is an appeal from an order terminating parental rights. Appellant, Todd D. M., was found by the district court to be an unfit parent. In making this determination, the district court relied, in part on two sexual assaults-on-a-minor adjudications in Todd's sealed juvenile record. The district court concluded that the child T.L.M.'s best interests favored termination based on Todd's extensive history of criminal activity, domestic violence, and sexual misconduct. We affirm the termination of parental rights.

Unsealing Todd's juvenile record

In finding Todd unfit as a parent, the district court considered two instances of sexual assault on a minor in his juvenile record. His juvenile record was previously sealed under a former version of NRS 62.370, which automatically sealed all juvenile records at age twenty-four. NRS 62.370(10)-(14) provides a list of grounds on which a court may order juvenile records unsealed, none of which apply here.

In 2001, the Legislature substantially revised NRS 62.370. Under the current version of NRS 62.370(3)-(4), if a child is adjudicated delinquent for various crimes, including sexual assault and lewdness with

a minor, his record may not be sealed before age thirty. Additionally, if a former juvenile delinquent under NRS 62.370(3) commits any offense (other than traffic violations) after age twenty-one, but before his record is sealed, the record may not be sealed.

Dawn argues that the statutory amendments retroactively unsealed Todd's juvenile record, and his convictions after age twenty-one prevented that record from being sealed. This argument is unpersuasive and without merit. Nothing in the current version of NRS 62.370 suggests that the Legislature intended to unseal the juvenile records of a large number of adults. The act amending NRS 62.370 expressly provided that the amendments would not retroactively apply to records sealed prior to July 1, 2001.[1] It is also worth noting that the hearing took place on May 23, 2001, more than a month before the amended statute's effective date of July 1, 2001.[2]

Dawn also argues that NRS 128.106, which provides that the district court shall consider "without limitation" acts of sexual abuse on a child in determining parental fitness, gives the district court authority to unseal juvenile records. However, NRS 62.370(9) provides: "If the court orders the records sealed, all proceedings recounted in the records are deemed never to have occurred[.]"

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[1]See 2001 Nev. Stat., ch. 285 § 8, at 1311 ("The amendatory provisions of this act apply to any act committed by a child before, on or after July 1, 2001, if the records pertaining to that act have not been sealed pursuant to NRS 62.370 before July 1, 2001.").

[2]See id. § 9, at 1311.

"[S]pecific statutes take precedence over general statutes."[3] Although NRS 128.106 directs the district court to consider, without limitation, acts of sexual abuse, NRS 62.370(9) specifically provides that Todd's juvenile acts "are deemed never to have occurred[.]" If the acts never occurred, then there is nothing for the district court to consider. Therefore, the district court erred by unsealing the records and considering their contents in determining Todd's fitness as a parent.

We further conclude that the district court's error was harmless. Under NRCP 61, this court must disregard errors that did not affect the substantial rights of the parties. The district court found that Todd committed sexually abusive conduct toward a child three times. One of these events occurred when Todd was an adult, and not long before T.L.M.'s birth. Thus, this factor would still have been present absent the error. Therefore, Todd's juvenile record, which only provided additional acts of sexual abuse over a decade earlier, likely had only a slight impact on the district court's determination.

Allowing Dawn to call Todd as a witness

Todd was not listed as a witness on Dawn's trial statement. However, Dawn's counsel was able to successfully persuade the district court that Todd was subject to testifying because he appeared at the hearing to oppose the petition. Dawn relies on NRS 50.165(2) which provides: "A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer." Todd points out that FJDCR

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[3]Gaines v. State, 116 Nev. 359, 365, 998 P.2d 166, 170 (2000), cert. denied, 531 U.S. 856 (2000).

10(2)(E) requires a party's trial statement to disclose "[t]he names and addresses of all witnesses, except impeaching witnesses[.]"

We conclude that both of these statutes grant the district court discretion to require testimony from a person present in court regardless of compliance with procedural rules. Thus, the district court did not clearly abuse its discretion when it ordered Todd to testify.

Sufficiency of evidence regarding unfitness

Todd argues that the record contains insufficient evidence to support a finding of parental unfitness. However, we conclude that there is sufficient evidence to support the district court's determination of parental unfitness. Todd's actions were not isolated acts, but rather persistent and continuous acts demonstrating parental unfitness. These incidents include a gross lewdness conviction involving a child victim, felony convictions for theft and escape, repeated domestic violence, and sexual misconduct with T.L.M. and the family dog. The record clearly shows that Todd's propensity towards pedophilia and other deviant sexual behavior which might emotionally and physically harm T.L.M., combined with his repeated criminal acts, render him unfit as a parent.

Todd also argues that the divorce decree limits him to supervised visits with T.L.M., such that she would not be at risk from his conduct. The district court concluded, however, that T.L.M.'s physical, mental, and emotional growth[4] would be best served by terminating Todd's rights. The district court found that T.L.M. would be forced into an uncomfortable and possibly dangerous situation during visitations. We

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[4]These are the decisive factors in terminating parental rights. See e.g., Matter of N.J., 116 Nev. at 801, 8 P.3d at 132-33; NRS 128.005(2)(c).

conclude that Todd's argument has more bearing on the district court's judgment, which this court cannot second-guess, than the sufficiency of the evidence. Therefore, we find this argument to be without merit.

Sufficiency of evidence regarding the child's best interests

Todd argues that Dawn presented insufficient evidence to prove by clear and convincing evidence that T.L.M.'s best interests favored termination. Specifically, Todd contends that Dawn's evidence was insufficient as a matter of law because she didn't present expert testimony regarding T.L.M.'s best interests. Todd relies on Smith v. Smith[5] for the proposition that a parent seeking to terminate another parent's rights must present expert testimony favoring termination in the child's best interests, and that even expert testimony alone is insufficient. Dawn counters that Todd misreads Smith. Dawn argues that in Smith the court actually held that, where expert testimony favored preserving parental rights, and no other evidence addressed the issue, the district court had insufficient evidence to terminate parental rights.[6]

This court has previously affirmed termination of parental rights in cases where expert testimony was not present.[7] Therefore, Todd's argument is without merit.

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[5]102 Nev. 263, 720 P.2d 1219 (1986), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).

[6]Id. at 267, 720 P.2d at 1221.

[7]See Matter of Parental Rights as to Carron, 114 Nev. 370, 956 P.2d 785 (1998), overruled on other grounds by Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000); Greeson v. Barnes, 111 Nev. 1198, 900 P.2d 943 (1995), superseded by statute on other grounds as recognized in Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).

Lastly, Todd argues that Dawn had an ulterior motive for her petition; she wanted to terminate Todd's rights so that she could offer T.L.M. for adoption in order to improve her romantic prospects. Dawn counters that this argument is so offensive and frivolous as to warrant sanctions. Based on the record, we conclude that both Todd's argument and Dawn's request for sanctions are without merit.

Conclusion

We conclude that the district court erred in considering Todd's juvenile record for sexual abuse of children without authority to unseal that record. However, this error was harmless in light of Todd's adult criminal record that revealed recent sexual abuse of a child. Therefore, the juvenile record likely played an insignificant role in influencing the district court's decision. Furthermore, we conclude that Todd's remaining arguments are without merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Young

_____, J.
Agosti

cc: Hon. Michael R. Griffin, District Judge
Erik R. Johnson
Law Offices of John P. Schlegelmilch, Ltd.
Carson City Clerk