IN THE SUPREME COURT OF THE STATE OF NEVADA

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

JASON V.,
Appellant,
vs.
CLARK COUNTY DEPARTMENT OF FAMILY SERVICES AND R.B.J., A MINOR,
Respondents.

No. 89225

FILED

SEP 10 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating parental rights. Eighth Judicial District Court, Family Division, Clark County; Robert Teuton, Judge.

Appellant Jason V. challenges the termination of his parental rights to his biological child, R.B.J. R.B.J. was removed from Jason's care at birth and placed in protective custody due to R.B.J.'s mother's prior involvement with Respondent Clark County Department of Family Services (DFS). Jason made some progress on a case plan to reunify with R.B.J., but Jason's probation was revoked due to a DUI arrest, and he was incarcerated. DFS subsequently petitioned to terminate Jason's parental rights. Jason opposed the revocation and the district court held a trial. The district court terminated Jason's parental rights, and Jason now appeals. Jason asserts rebuttable presumptions contained in NRS 128.109 unconstitutionally place a burden on parents to preserve their rights. Jason also contends the district court was biased and inattentive during the proceedings resulting in an unfair trial. We disagree and affirm.

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Jason first challenges the constitutionality of NRS 128.109(1)(a) and NRS 128.109(2). Each challenged section of NRS 128.109 provides a rebuttable presumption against parents when the child in question has been in protective custody for 14 or more of the last 20 consecutive months. NRS 128.109(1)(a) provides a presumption that termination is in the child's best interests and NRS 128.109(2) provides a presumption that the parental fault ground of token efforts exists. "[T]his court reviews de novo determinations of whether a statute is constitutional." *Hernandez v. Bennett-Haron*, 128 Nev. 580, 586, 287 P.3d 305, 310 (2012). "Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional." *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009) (quoting *Silvar v. Eighth Jud. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)).

Jason contends that NRS 128.109 violates parents' procedural due process rights by shifting the burden of proof to parents in termination of parental rights proceedings. We disagree. In assessing whether a process provides adequate due process we consider the private interest at stake, the risk of erroneous deprivation through current procedures and value of additional procedures, and the State's interest in an efficient and expedient procedure. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Parental rights are a paramount private interest. *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982). Despite the gravity of the private interest at stake, we have already concluded presumptions against parents do not impermissibly risk erroneous deprivation, so long as the applicability of the presumptions is proven by clear and convincing evidence, and rebuttable by a preponderance of the evidence. *In re J.D.N.*, 128 Nev. 462,

472-73, 283 P.3d 842, 849 (2012). Further, the presumptions in NRS 128.109 serve Nevada's "compelling interest in assuring that abused and neglected children achieve safe, stable and permanent home environments within which to be reared." *In re Parental Rts. as to D.R.H.*, 120 Nev. 422, 427, 92 P.3d 1230, 1233 (2004) (upholding NRS 128.109(2) against a substantive due process challenge). Thus, we conclude NRS 128.109's rebuttable presumptions satisfy the balancing test enumerated in *Mathews*.

We are also unpersuaded by Jason's citation to extra-jurisdictional case law. While at least one jurisdiction has struck down a similar statute, *see In re Erin*, 823 N.E.2d 356, 361 (Mass. 2005) (discussing a presumption the child's best interests would be served by termination based on placement in protective custody for a period of time), many jurisdictions have also upheld presumptions against parents, so long as they are rebuttable, *see, e.g.*, *In re K.R.*, 233 P.3d 746, 752 (Kan. Ct. App. 2010) (holding parents must receive notice when the state intends to apply an adverse presumption so the parents may rebut it); *Sampson v. Div. of Fam. Servs.*, 868 A.2d 832, 835-36 (Del. 2005) (allowing a rebuttable presumption in favor of termination if that parent had prior terminations); *In re T.M.G.*, 283 S.W.3d 318, 325-26 (Tenn. Ct. App. 2008) (allowing a rebuttable presumption of unfitness based on incarceration). Minimal extra-jurisdictional support for Jason's position is insufficient to overcome NRS 128.109's presumption of constitutionality. Lastly, on the question of NRS 128.109's constitutionality, we decline to consider Jason's Equal Protection argument as he failed to raise it in the opening brief. *See Bongiovi v. Sullivan*, 122 Nev. 556, 569 n.5, 138 P.3d 433, 443 n.5 (2006).

Turning to the alleged issues at trial, Jason asserts the district court was biased and inattentive, resulting in an unfair proceeding.

Starting with the allegation of bias, Jason waived this issue by failing to move for recusal of the district court judge during the proceedings below. *A Minor v. State*, 86 Nev. 691, 694, 476 P.2d 11, 13 (1970). As evidence of the district court's inattentiveness, Jason points to the reconsideration of two pieces of evidence. First, the district court admitted portions of the record of Jason's dependency court proceedings despite previously indicating it might exclude the evidence. While the district court indicated earlier it might exclude the evidence, the fact that it ultimately admitted the records does not show a lack of attention, as the district court carefully considered which evidence was admissible. Second, Jason asserts the district court initially agreed some evidence would be barred by the Confrontation Clause of the Sixth Amendment; however, the Sixth Amendment applies only to criminal defendants. Because terminations of parental rights are civil in nature, the Sixth Amendment confrontation right does not apply here. We do not discern inattentiveness in the district court's correct application of evidentiary rules.

While not affecting the result of the trial, we note the judge at times appeared via video during the trial while parties and witnesses appeared in person. Since Jason's trial, we have adopted rules governing the use of videoconferencing. *See* ADKT 581 (Order Adopting Recommendations of the Commission to Study Best Practices for Virtual Advocacy in Nevada's Courts, Dec. 22, 2023). Terminations of parental rights are presumptively to be held in person, which includes the judicial officer. *Id.* Ex. D. Judicial officers should endeavor to be present in the courtroom. *Id.* Ex. A. While we recognize district courts' discretion to conduct hearings and witness testimony via video, this discretion should be

exercised carefully with an eye toward the gravity of the proceedings in question, and the relative advantages and disadvantages of appearing via video.

Finally, because of the great consequence of terminations of parental rights, we examine the record to ensure the district court's decision is supported by substantial evidence. *In re Parental Rts. as to A.J.G.*, 122 Nev. 1418, 1423, 148 P.3d 759, 763 (2006) ("On appeal, we review the district court's factual findings in its order terminating parental rights for substantial evidence, and we will not substitute our own judgment for that of the district court."). DFS must prove, by clear and convincing evidence, that termination is in the child's best interest, and at least one ground of parental fault exists. 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).

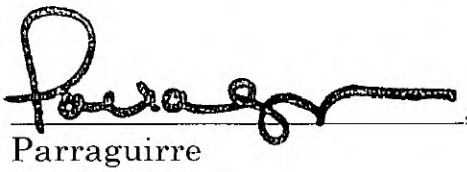
Beginning with R.B.J.'s best interests, the record shows R.B.J. would be best served by termination of Jason's parental rights. R.B.J. has bonded with his foster family, which includes his biological half-sister, and the foster family wishes to adopt R.B.J. and his half-sister. R.B.J. has also benefitted from a stable home environment—the only one he has ever known—where he is able to receive occupational therapy. Thus, substantial evidence supports the district court's determination that termination would be in R.B.J.'s best interests.

Evidence in the record also supports the district court's findings of parental fault. The district court found parental unfitness, neglect, and token efforts based on Jason's long history of drug use, leading to criminal activity including domestic violence, and resulting in his incarceration, release, relapse, and recidivism. The district court's conclusion was not based on Jason's drug use alone, but the pattern of criminal activity,

incarceration, and relapse that meant Jason was unable to provide for R.B.J. or his previous child. NRS 128.106(1)(d) (providing that "[e]xcessive use of intoxicating liquors, controlled substances or dangerous drugs which renders the parent consistently unable to care for the child" may be evidence of parental unfitness). Jason argues the district court omitted testimony that he completed parenting, domestic violence, and anger management classes while incarcerated, but the district court did, in fact, acknowledge that Jason completed some programs while in prison. The district court gave little weight to the testimony because Jason had no definitive plan to address his substance abuse after release and had previously completed similar programs, only to relapse.

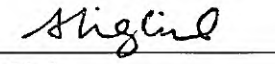
Because substantial evidence supports the termination of Jason's parental rights to R.B.J., and his other arguments lack merit, we,

ORDER the judgment of the district court AFFIRMED.



_____, J.
Parraguirre

_____, J.
Bell



_____, J.
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cc: Hon. Robert Teuton, District Judge, Family Division
Ford & Friedman, LLC
Law Office of Alyssa Aklestad, LLC
Clark County District Attorney/Juvenile Division
Eighth Judicial District Court Clerk