

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO T.B.A.

No. 39092

\_\_\_\_\_  
SHAHRAM H.,  
Appellant,  
vs.  
LORENE A-M.,  
Respondent.

FILED

MAR 17 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
By *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating Shahram H.'s parental rights and two post-judgment orders denying Shahram's motions, under NRCP 60(b)(2) and (3), to vacate the termination order .

On April 8, 1999, T.B.A. was born to Shahram and Lorene A-M. Shahram and Lorene never married. On October 5, 1999, Lorene and Shahram met at a self-help legal clinic in Las Vegas. It was the first time Shahram saw the child. While there, Shahram signed a consent for termination of parental rights as to a minor child (termination document). On October 28, 1999, after a termination hearing, at which Shahram was not present, the district court granted termination of Shahram's parental rights.

On September 12, 2001, Shahram filed a motion to set aside the order terminating his parental rights pursuant to NRCP 60(b)(2) because he claimed he was fraudulently led to believe the termination document would allow him to visit the child. The district court denied the motion, finding that Shahram's consent to the termination was valid. On January 4, 2002, Shahram appealed the order denying his NRCP 60(b)(2)

motion and the order terminating his parental rights. On January 3, 2002, Shahram filed a motion to vacate the order terminating his parental rights pursuant to NRCP 60(b)(3) because of ineffective service. On January 29, 2002, the district court denied the motion, finding Shahram waived his right to service. On January 31, 2002, Shahram appealed the January 29 order. The January 4 and the January 31 appeals were filed under the same docket number in this court .

Shahram argues that he did not knowingly and voluntarily consent to the termination of his parental rights, nor did he waive his right to notice of the parental rights termination hearing. The district court affirmed the order terminating Shahram's parental rights. A district court has wide discretion in determining whether to grant an NRCP 60(b) motion to set aside an order and, unless the court abuses this discretion, its decision will not be disturbed.<sup>1</sup>

A waiver may be established by an express agreement, but there must be an intentional relinquishment of a known right.<sup>2</sup> A legal presumption of a waiver will only be drawn in clear cases.<sup>3</sup> The termination document specifically states that Shahram relinquishes all rights as the child's father. The document also clearly states that Shahram waives any notice required by law in connection with the termination proceedings, and that he consents to a hearing and order

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<sup>1</sup>Union Petrochemical Corp. v. Scott, 96 Nev. 337, 338, 609 P.2d 323, 323 (1980).

<sup>2</sup>Parkinson v. Parkinson, 106 Nev. 481, 483, 796 P.2d 229, 231 (1990).

<sup>3</sup>Keane v. Murphy, 19 Nev. 89, 96, 6 P. 840, 844 (1885).

terminating his rights. Thus, Shahram knew the rights he was relinquishing and expressly waived those rights when he signed the document.

Shahram implies that he was forced to sign the document. However, Shahram agreed to meet Lorene at the self-help legal clinic for the purpose of terminating his rights. Lorene also testified that Shahram paid for the paralegal to draw up the forms. The document was attested to by two witnesses and notarized. Therefore, the district court did not abuse its discretion by finding Shahram voluntarily signed the termination document.

Shahram asserts that regardless of the termination document, NRS 128.060 mandates he be given notice of the hearing. NRS 128.060 provides that after the termination petition is filed, the father of the child must be personally served with notice unless the father "voluntarily appear[s] and consent[s] to the hearing."<sup>4</sup> A statutorily required notice can be deemed waived if a purpose to do so is clearly and definitely manifested.<sup>5</sup> In the termination document, Shahram explicitly agreed to waive any notice required by law for termination proceedings.

Shahram argues that pursuant to NRS 128.060, waiver could only occur if he appeared in court and consented to the hearing. The purpose of the notice requirement and waiver by appearance is so that the parent's parental rights are not terminated without their knowledge.<sup>6</sup> Although Shahram did not personally appear in court, the termination

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<sup>4</sup>NRS 128.060(1).

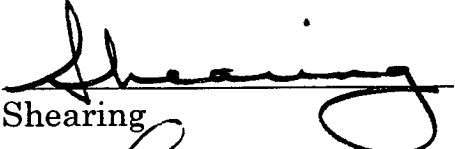
<sup>5</sup>D'Errico v. D'Errico, 51 Nev. 76, 80, 269 P. 26, 27 (1928).

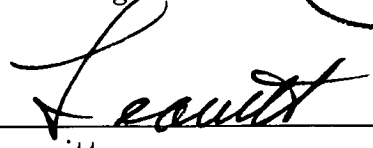
<sup>6</sup> See NRS 128.060(1).


document constitutes an "appearance" because it clearly indicates that Shahram knew his parental rights were being terminated and voluntarily waived any notice of the termination proceeding.

Alternatively, Shahram asserts that under the doctrine of equitable adoption, he constructively adopted the child. The district court denied Shahram's request for equitable adoption. This court has held that the doctrine of equitable adoption is inapplicable in ascertaining paternity and, instead, uses the doctrine to determine child support disputes.<sup>7</sup> Because Shahram's equitable adoption argument concerns his status as a legal parent to the child, the doctrine is inapplicable. We, therefore, affirm the order terminating Shahram's parental rights and the district court orders denying his motions to vacate the termination order.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

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<sup>7</sup>See Russo v. Gardner, 114 Nev. 283, 288-89, 956 P.2d 98, 101-02 (1998); Sargeant v. Sargeant, 88 Nev. 233, 230, 495 P.2d 618, 623 (1972).

cc: Hon. Gerald W. Hardcastle, District Judge,  
Family Court Division  
Hon. Robert E. Gaston, District Judge,  
Family Court Division  
Leo P. Flangas  
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Clark County Clerk