

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO J. B. S.

No. 40975

BILLIE J. S., JR.,  
Appellant,

vs.

THE STATE OF NEVADA, DIVISION  
OF CHILD AND FAMILY SERVICES,  
DEPARTMENT OF HUMAN  
RESOURCES,  
Respondent.

FILED

JUN 04 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order terminating appellant's parental rights.

In order to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the child's best interest and that parental fault exists.<sup>1</sup> If substantial evidence in the record supports the district court's determination that clear and convincing evidence warrants termination, this court will uphold the termination order.<sup>2</sup> In the present case, the district court determined that it was in the child's best interest that appellant's parental rights be terminated. The district court also found by clear and convincing evidence

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<sup>1</sup>See Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000); NRS 128.105.

<sup>2</sup>Matter of Parental Rights as to Carron, 114 Nev. 370, 374, 956 P.2d 785, 787 (1998), overruled on other grounds by Matter of N.J., 116 Nev. 790, 8 P.3d 126.

parental fault on the grounds of unfitness, failure of parental adjustment, and only token efforts.

As for unfitness<sup>3</sup> and failure of parental adjustment,<sup>4</sup> the district court found that appellant had the opportunity, when he was released from prison in 2000, to stop his lifestyle of drugs and violence and be reunified with the child by complying with the reunification plan provided by respondent, but appellant failed to comply with the reunification plan and was arrested in 2001 for drug possession and battery, and has been incarcerated ever since.

With respect to token efforts, under NRS 128.109(1)(a) and NRS 128.109(2), if a child has been in foster care for more than fourteen months it is presumed that the parent has made only token efforts to care for the child and that termination is in the child's best interest. To overcome this presumption, appellant offered evidence that he had enrolled in various self-help programs while incarcerated. Also, appellant insisted that upon his release from prison he plans to work as a medical technician and that his main concern is his child. Respondent contended that it was not fair to the child to wait any longer for appellant to prove that he can be a responsible parent and care for the child. The district

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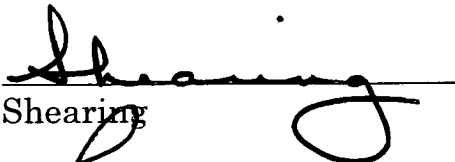
<sup>3</sup>NRS 128.105(2)(c). An unfit parent is one who by his or her own fault, habit, or conduct toward the child, fails to provide the child with proper care, guidance, and support. NRS 128.018.

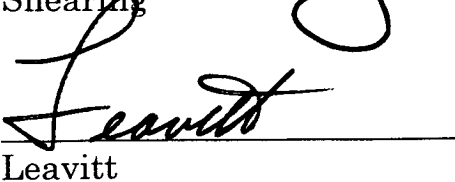
<sup>4</sup>See NRS 128.105(2)(d) (establishing parental fault based on failure of parental adjustment); NRS 128.109(1)(b) (providing that if a child has been placed outside the home for more than six months, there is a presumption of failure of parental adjustment when a parent fails to comply substantially with a reunification plan).

court concluded that appellant did not overcome the presumption of token efforts.

Having reviewed the record, we conclude that the district court's decision is supported by substantial evidence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Gerald W. Hardcastle, District Judge, Family Court Division  
Attorney General Brian Sandoval/Las Vegas  
Billie J. S., Jr.  
Clark County Clerk