

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL  
RIGHTS AS TO C. N. F., A MINOR

No. 42332

TROY D. H., JR.,  
Appellant,  
vs.  
BOBBIE J. R.,  
Respondent.

FILED

MAR 04 2004

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.<sup>1</sup>

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 must establish parental fault.<sup>2</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>3</sup> In the present case, the district court determined that

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<sup>1</sup>We direct the clerk to modify the caption on this court's docket to reflect the caption on this order.

<sup>2</sup>See Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000); NRS 128.105.

<sup>3</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.

it is in the child's best interest that appellant's parental rights be terminated. The district court further found by clear and convincing evidence that appellant is an unsuitable parent on the basis of abandonment and neglect.

Under NRS 128.012(1), the term "abandonment of a child" is defined as "any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child." Intent is the decisive factor in abandonment and may be shown by the facts and circumstances.<sup>4</sup> The statute also creates a presumption of abandonment when "a parent . . . leave[s] the child in the care and custody of another without provision for his support and without communication for a period of 6 months."<sup>5</sup> This presumption of abandonment is mandatory.<sup>6</sup> Here, the district court found that appellant had failed to overcome the statute's abandonment presumption, as appellant had left the child in the care and custody of the child's mother without provision for his support and without communication for a period in excess of five years.

The district court also found, by clear and convincing evidence, that appellant had neglected the child. Under NRS 128.105(2)(b),

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<sup>4</sup>Smith v. Smith, 102 Nev. 263, 266, 720 P.2d 1219, 1221 (1986), overruled on other grounds by Matter of N.J., 116 Nev. 790, 8 P.3d 126.

<sup>5</sup>NRS 128.012(2).

<sup>6</sup>See Matter of N.J., 116 Nev. at 804, 8 P.3d at 135.

parental rights may be terminated for “[n]eglect of the child.” NRS 128.014(2) defines “[n]eglected child” as a child “[w]hose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals or well-being.” The district court found that appellant had failed to provide any subsistence or care of any kind for the child.

Finally, a district court must consider a parent’s incarceration in determining whether termination is proper.<sup>7</sup> Incarceration alone does not establish parental fault as a matter of law.<sup>8</sup> This court has explained that “[w]hen considering a parent’s incarceration in termination proceedings, the district court must consider the nature of the crime, the sentence imposed, who the crime was committed upon, the parent’s conduct toward the child before and during incarceration, and the child’s specific needs.”<sup>9</sup> In appellant’s opposition to the termination petition, he argued, in part, that his incarceration and the crime for which he is currently incarcerated did not warrant terminating his parental rights. The record reveals that the district court considered appellant’s

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<sup>7</sup>Matter of Parental Rights as to J.L.N., 118 Nev. 621, 55 P.3d 955 (2002); see also Matter of Parental Rights as to K.D.L., 118 Nev. 737, 58 P.3d 181 (2002).

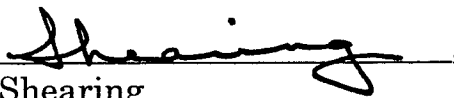
<sup>8</sup>Matter of K.D.L., 118 Nev. 737, 58 P.3d 181.

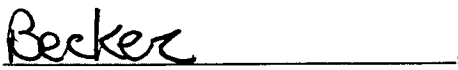
<sup>9</sup>Matter of J.L.N., 118 Nev. at 628, 55 P.3d at 960.

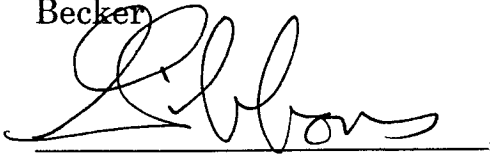
incarceration and the crime he committed, and found that termination was warranted not based on these considerations, but rather because appellant had abandoned and neglected the child.<sup>10</sup>

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.<sup>11</sup>

 C.J.  
Shearing

 J.  
Becker

 J.  
Gibbons

cc: Hon. Robert E. Estes, District Judge  
Attorney General Brian Sandoval/Carson City  
Robert A. Grayson, Esq.  
Troy D. H. Jr.  
Lyon County Clerk

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<sup>10</sup>See NRS 128.105(2) (providing that only one basis for parental fault must be established to support the termination of parental rights).

<sup>11</sup>We note that appellant's failure to pay the filing fee could constitute a basis for dismissing this appeal. Nevertheless, we have elected to review this appeal.