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In re Parental Rights as to M.F., 132 Nev. Adv. Op. 19 (Mar. 31, 2016)

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FAMILY LAW: TERMINATING PARENTAL RIGHTS

Summary

The Court held that neither the United States Constitution nor the Nevada Constitution guarantees the right to a trial by jury in a termination of parental rights proceeding. The Court also concluded that the district court relied on substantial evidence in terminating appellant Jesus F.'s parental rights.

Background

In January 2010, the Washoe County Department of Social Services (WCDSS) removed Jesus F.'s six children from his home due to drug use, safety hazards, and inadequate supervision. All six children were placed in protective custody, and resided in various out of home placements over the next four years. By the time the three older children reached the age of majority, WCDSS filed a petition to terminate Jesus F.'s parental rights as to the three minor children.

Jesus F. demanded a jury trial, but the district court issued an order denying his demand. The district court concluded that the right to a jury trial in parental termination proceedings is not guaranteed by common law, statute, nor the Nevada Constitution. After the Court conducted a bench trial, it terminated Jesus F.'s parental rights as to the three minor children.

Jesus F. then appealed arguing that the district court erred in (1) denying his demand for a jury trial in the termination of parental rights proceeding, (2) concluding that it was in the minor children's best interests to terminate Jesus F.'s parental rights pursuant to NRS 128.109(2), and (3) concluding that Jesus F.'s parental fault had been established pursuant to NRS 128.105(2).

Discussion

The district court did not err in denying Jesus F.'s demand for a jury trial in the termination of parental rights proceeding

Constitutional issues, such as the right to a jury trial, are reviewed de novo.² Upon a de novo review, the Court concluded that neither the United States Constitution nor the Nevada Constitution guarantees the right to a jury trial in termination of parental rights proceedings.

The United States Constitution does not guarantee the right to a jury trial in a termination of parental rights proceeding

The Seventh Amendment of the United States Constitution guarantees the right to a civil jury trial, however, that Amendment does not apply to the states.³ The United States Supreme Court has held that states cannot terminate parental rights without due process of law because "the companionship, care, custody, and management of [one's] children" is an important interest that

¹ By Shannon Diaz.

² *Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 618, 173 P.3d 707, 711 (2007).

³ *See Hawkins v. Bleakly*, 243 U.S. 210, 216 (1917); *See also Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211, 217 (1916).

“warrants protection,”⁴ but the Court has not addressed whether due process requires a jury trial for a termination of parental rights proceeding. Yet because parents retain a vital interest in preventing destruction of their family life, due process requires states to provide parents with fundamentally fair procedures in parental termination proceedings.⁵

The United States Supreme Court has formulated a balancing test to evaluate whether a proceeding violates a parent’s due process rights. The *Mathews* test requires a Court to balance (1) the private interest affected by the proceeding, (2) the risk or error inherent in the state’s procedures, and (3) the countervailing government interest.⁶ While a parent’s interest is a “commanding one,”⁷ a state also retains an interest in promoting the child’s welfare, and an administrative interest in reducing the cost and burdens of a termination proceeding.⁸ Moreover, the Court has refused to guarantee the right to counsel in a termination proceeding because the parent does not risk personal liberty.⁹

The Nevada Supreme Court concluded that because Jesus F. does not risk a loss of personal liberty, the Court must apply the *Mathews* test. Jesus F.’s interest in the companionship, care, custody, and management of his three minor children must be weighed against the state’s interest in the welfare of the children, conservation of judicial resources, and the need for an accurate and fair outcome. The Court concluded that because both parties have compelling interests, the analysis turns on an evaluation of the risk that the procedures used would have resulted in an erroneous decision.

The decision to hold a bench trial as opposed to a jury trial posed only a minimal risk of an erroneous decision. First, a jury is not a required component of fact finding,¹⁰ and the family court judge demonstrated familiarity with the rules of evidence, the legal standards of a termination action, and the Nevada Rules of Civil Procedure. The court also applied the heightened clear and convincing standard. Second, Jesus F. was given notice of the proceeding, afforded competent counsel to protect his interest, and was afforded the opportunity to confront and cross-examine the witnesses against him.¹¹ Third, Jesus F. retained the right to appeal from the adverse decision. Thus, the district court did not violate Jesus F.’s due process rights pursuant to the U.S. Constitution.

The Nevada Constitution does not guarantee the right to a jury trial in a termination of parental rights proceeding

The Nevada Constitution guarantees that the right to a trial by jury “shall be secured to all and remain inviolate forever.”¹² The phrase “remain inviolate forever” indicates an intent to

⁴ Stanley v. Illinois, 405 U.S. 645, 650–51 (1972).

⁵ Santosky v. Kramer, 455 U.S. 745, 753–54 (1982).

⁶ *Id.* at 754 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

⁷ *Id.* at 759.

⁸ *Id.* at 766.

⁹ Lassiter v. Dep’t of Social Servs., 452 U.S. 18, 25–26 (1981).

¹⁰ McKeiver v. Pennsylvania, 403 U.S. 528, 543 (1971).

¹¹ *See id.* at 543–45.

¹² NEV. CONST. art 1, §3.

perpetuate the jury trial right as the framers understood it when the Constitution was adopted.¹³ No action existed for termination of parental rights when the Constitution was adopted, and the Legislature has not conferred the right to a jury trial in such proceedings, thus, the Nevada Constitution does not guarantee a jury trial in a termination of parental rights proceeding.

Moreover, requiring jury trials in the district court's family division implicates many policy concerns. First, it would institute a delay and would slow the pace of the high volume cases before the family court, which would create a backlog where speedy resolution is important. Second, it may undermine the interest of maintaining a child's anonymity. Third, many family courts in Nevada are not equipped to accommodate jurors. Finally, a jury may not necessarily render a decision more reliable than a family court judge.¹⁴ This is consistent with the national trend to deny jury trials in termination of parental rights proceedings.

The district court relied on substantial evidence in its decision to terminate Jesus F.'s parental rights

Substantial evidence is that which a reasonable person would accept as adequate to sustain a judgment.¹⁵ To terminate parental rights, a petitioner must demonstrate by clear and convincing evidence that (1) at least one ground of parental fault exists, and (2) termination is in the child's best interest.¹⁶ The primary consideration being the best interest of the child.¹⁷ The following presumptions exist for a child who have resided outside of the home for 14 of any 20 consecutive months: (1) a court must presume that the parent has made only token efforts to care for the child, and (2) the best interest of the child must be presumed to be served by the termination of parental rights.¹⁸ A parent may rebut these presumptions by a preponderance of evidence.¹⁹

Here, substantial evidence supports the district court's findings that termination of Jesus F.'s parental rights was in the best interests of the children, and that Jesus F. failed to rebut the presumption due to his failure to show that there was a reasonable prospect that he could provide for the children's basic needs within a reasonable period of time.²⁰ Second, substantial evidence supports the district court's findings as to five separate grounds of parental fault of Jesus F.'s behalf. Thus, termination Jesus F.'s parental rights was supported by substantial evidence.

Conclusion

The district court properly denied Jesus F.'s demand for a jury trial in the termination of parental rights proceeding. Further, substantial evidence supports the district court's decision to terminate Jesus F.'s parental rights. The Court affirmed the district court's order.

¹³ See *Awada*, 123 Nev. at 621, 173 P.3d at 712.

¹⁴ See *Duncan v. Louisiana*, 391 U.S. 145, 158 (1968).

¹⁵ *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

¹⁶ NEV. REV. STAT. 128.105(1)-(2).

¹⁷ NEV. REV. STAT. 109.

¹⁸ NEV. REV. STAT. 128.109(1)(a), (2).

¹⁹ *In re Parental Rights as to J.D.N.*, 128 Nev. 462, 472, 283 P.3d 842, 849 (2012).

²⁰ See *id.*