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In re Parental Rights as to A.D.L., 133 Nev. Adv. Op. 72 (Oct. 5, 2017)

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FAMILY LAW: PARENTAL RIGHTS

Summary

The Nevada Supreme Court held that (1) requiring a parent to admit guilt to a criminal act in order to maintain his or her parental rights violates that parent's Fifth Amendment rights; and (2) substantial evidence must demonstrate that terminating parental rights is in the best interest of the children when a parent overcomes the presumptions in NRS 128.109(1)-(2).

Background

In April 2010, an anonymous person called respondent Clark County Department of Family Services (DFS) through its child abuse hotline alleging that Keandra's children were being abused and neglected because Keandra's infant child's face had been burned. DFS investigated the allegations by interviewing Keandra. During the initial interview, Keandra explained that C.L.B., Jr. burned his face while Keandra was preparing for work. She had left a hot iron on a dresser in the master bedroom. Keandra's two children, A.D.L. and C.L.B. Jr., remained in the master bedroom unsupervised. Keandra heard the iron fall and came out of the adjacent bathroom to find that C.L.B., Jr. had been burned. A.D.L. told Keandra that C.L.B., Jr. had "tried to kiss the iron." Keandra called her mother, a nurse, who advised Keandra to put ointment on the injury and take C.L.B. Jr. to the emergency room if the burn blistered.

Following the initial interview, DFS removed the children from Keandra's custody. Once the children were removed from Keandra's custody, Dr. Thomas A. Neuman, a physician, examined C.L.B., Jr.'s burn. Dr. Neuman determined that the injury healed well and did not find any evidence of abuse. In May 2010, DFS filed a petition for protective custody of A.L.D. and C.L.B. Jr. Keandra entered a denial at the plea hearing. DFS responded by requesting that the children be placed with their maternal grandmother.

At the following adjudicatory hearing, the hearing master admitted Dr. Neha Mehta's testimony as a medical examiner regarding his professional opinion of C.L.B. Jr.'s injuries. Dr. Mehta reviewed photographs of the injuries and reported that the shape of the injury was inconsistent with an accident. He believed the iron had been intentionally held to C.L.B. Jr.'s face. Keandra attempted to rebut Dr. Mehta's testimony by offering Dr. Neuman's report. However, the hearing master excluded Dr. Neuman's report because the report was not a certified copy. Therefore, the hearing master concluded that Keandra physically abused C.L.B. Jr., had medically neglected him, and had absconded. The hearing master recommended that the abuse and neglect petition be sustained and that A.D.L. and C.L.B. Jr. remain in DFS custody. The juvenile court considered and affirmed the hearing master's recommendation.

Following the juvenile court's decision, Keandra received a case plan that required her to maintain stable housing and income, complete parenting classes, and maintain contact with DFS. Keandra was also required to complete a physical abuse assessment and "be able to articulate in dialogue with the Specialist and therapist(s) the sequence of events which result[ed] in physical abuse, as sustained by the Court, and how he/she will be able to ensure that no future physical abuse to [C.L.B.] Jr. occurs."

¹ By Alexis Wendl.

One month later, DFS filed a petition to terminate Keaundra's parental rights. Over the following six months, Keaundra demonstrated that she completed the parenting classes, maintained housing, had steady employment, and completed her assessment and therapy. DFS was satisfied with Keaundra's progress and recorded that she had "successfully completed her case plan and has the knowledge and tools to effectively parent her children." Nonetheless, DFS continued to recommend that Keaundra's parental rights be terminated because she failed to admit that she abused C.L.B. Jr. when she held an iron to his face. Despite Keaundra's nearly perfect compliance with the case plan, the district court terminated Keaundra's parental rights to both children based on the hearing master's recommendation and Keaundra's failure to remedy the "circumstances, conduct, or conditions" that lead to C.L.B. Jr.'s removal. Further, the district court terminated her parental rights because of her "token efforts, failure of parental adjustment, and unfitness."

Keaundra immediately appealed that decision to the Court. The Court reversed the district court's holding because it failed to admit Dr. Neuman's report and remanded the case for a new trial on parental fault and the consideration of additional evidence. At the second trial, the district court admitted Dr. Neuman's report, and Dr. Mehta once again testified. The district court reaffirmed its prior decision to terminate Keaundra's parental rights largely because Dr. Mehta had credentials and compelling testimony that supported Keaundra deliberately placing the iron on C.L.B. Jr.'s face. Notably, the district court concluded that Keaundra "continued to insist that the burn was accidental in nature in spite of all physical evidence being to the contrary." Keaundra appealed the district court's holding.

Discussion

The district court's termination of Keaundra's parental rights constituted a violation of her Fifth Amendment right against self-incrimination

The Fifth Amendment right against self-incrimination provides that "[n]o person... shall be compelled in any criminal case to be a witness against himself."² The Fifth Amendment protects individuals in civil proceedings from self-incrimination when answering official questions in any proceeding.³ Further, The United States Supreme Court has held that a state may not compel an individual to choose between the Fifth Amendment right against self-incrimination and another principal interest because "such a choice is inherently coercive."⁴ Founded on the belief that "the parent-child relationship is a fundamental liberty interest," the Nevada Supreme Court ("the Court") emphasized that the termination of parental rights must be highly regarded.⁵

Although the state maintains an important interest in protecting the welfare of children,⁶ the Court agreed with various jurisdictions that the state may not threaten the loss of parental rights to compel a parent to admit to a crime.⁷ The state's role is limited to evaluating if a parent has

² See *Estelle v. Smith*, 451 U.S. 454, 462 (1981) (quoting U.S. Const. amend. V).

³ *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973).

⁴ *Lefkowitz v. Cunningham*, 431 U.S. 801, 805–08 (1977).

⁵ *In re Termination of Parental Rights as to N.J.*, 116 Nev. 790, 801, 8 P.3d 126, 133 (2000).

⁶ See *In re N.J.*, 116 Nev. at 802, 8 P.3d at 133; see also NEV. REV. STAT. § 128.005(2)(c) (2017).

⁷ See, e.g., *Dep't of Human Servs. v. K.L.R.*, 230 P.3d 49, 54 (Or. Ct. App. 2010) ("[R]equiring an admission of abuse as a condition of family reunification violates a parent's Fifth Amendment rights...").

adjusted circumstances to ensure the child's safe return.⁸ Moreover, the Court can require a parent to complete therapy as provided in a family reunification plan but the Court cannot explicitly require a parent to admit guilt.⁹ Courts violate a parent's Fifth Amendment right when the parent is required to directly admit guilt or through a therapy program that mandates an admission of guilt to achieve family reunification.¹⁰

The Court focused on DFS's six-month record that demonstrated Keandra's success in therapy which occurred without Keandra's admission of guilt. Despite Keandra's success in all aspects of her case plan, except the required admission of guilt, Keandra could not fully comply with the case plan without admitting she committed a criminal act.¹¹ Therefore, the district court violated Keandra's Fifth Amendment rights by terminating her parental rights when she refused to admit she intentionally caused C.L.B. Jr.'s injury.¹²

There was not substantial evidence to support the district court's decision to terminate Keandra's parental rights

For the second question, DFS must provide clear and convincing evidence that (1) terminating the parental rights is in the child's best interest and; (2) parental fault exists.¹³ Additionally, the termination of parental rights is subject to strict scrutiny because it "is an exercise of awesome power that is tantamount to imposition of a civil death penalty."¹⁴ Thus, the Court seeks substantial evidence when evaluating the district court's findings of fact because parental rights are highly regarded.

The district court abused its discretion in concluding that terminating Keandra's parental rights was in the children's best interests

A parent may rebut NRS 128.109(2)'s presumption by providing a preponderance of evidence that termination is not in the child's best interest.¹⁵ The Court weighs the interests of the children with the interests of the parents when deciding whether to terminate parental rights.¹⁶ Additionally, NRS 128.107(2) requires the district court to consider the "physical, mental or emotional condition and needs of the child and the child's desires regarding the termination, if the court determines the child is of sufficient capacity to express his or her desires."¹⁷

The Court found that the district court failed to consider the "physical, mental, or emotional condition and needs" of the children. Further, the record reflected a preponderance of evidence establishing that Keandra rebutted NRS 128.109(2)'s presumption as demonstrated by her

⁸ See generally NEV. REV. STAT. § 128.107(3) (2017); In re M.C.P., 571 A.2d 627, 640 (Vt. 1989).

⁹ In re A.W., 896 N.E.2d 316, 326 (Ill. 2008); In re C.H., 652 N.W.2d 144, 150 (Iowa 2002); In re J.W., 415 N.W.2d 879, 883 (Minn. 1987) ("While the state may not compel therapy treatment that would require appellants to incriminate themselves, it may require the parents to otherwise undergo treatment.").

¹⁰ In re C.H., 652 N.W.2d at 150; In re P.M.C., 902 N.E.2d 197, 203 (Ill. App. Ct. 2009).

¹¹ See NEV. REV. STAT. § 200.508 (2015).

¹² See In re J.W., 415 N.W.2d at 882-83.

¹³ In re Parental Rights as to A.J.G., 122 Nev. 1418, 1423, 148 P.3d 759, 762 (2006).

¹⁴ *Id.* (internal quotation marks omitted).

¹⁵ In re Parental Rights as to J.D.N., 128 Nev. 462, 472, 283 P.3d 842, 849 (2012); see NEV. REV. STAT. § 128.109(2) (2017) (establishing a presumption that terminating the parent's parental rights is in the child's best interest when the child has been placed outside the home for 14 of any consecutive months).

¹⁶ In re N.J., 116 Nev. at 802, 8 P.3d at 134.

¹⁷ NEV. REV. STAT. § 128.107(2) (2017).

financial support, regular contact with the children, and A.D.L.’s heightened desire to be reunited with her mother. Accordingly, the district court abused its discretion in determining that terminating Keandra’s parental rights was in the children’s best interest.

The district court abused its discretion in concluding that there was clear and convincing evidence of parental fault

Parental fault is determined by considering factors such as whether a parent is unfit or failed to adjust,¹⁸ or merely made “token efforts” to maintain contact or support the child, prevent child neglect, be a fit parent, or “eliminate the risk of serious physical, mental or emotional injury to the child.”¹⁹ The Court presumes that a parent made only token efforts when the child is placed outside the home “for 14 months of any 20 consecutive months.”²⁰ Further, a parent fails to adjust to the circumstances when the parent does not substantially comply with the terms of the case plan to reunite the family within six months after the children were placed or the case plan commenced.²¹

The Court emphasized that Keandra maintained housing and employment, maintained contact with her children and DFS, provided financial support for her children, and complied with the mandated assessment and therapy to the therapist’s satisfaction. Notably, even DFS admitted that Keandra was equipped with the proper knowledge and tools to parent the children. Aside from Keandra refraining from the admission of physical abuse, she completed with the case plan in all regards. Thus, the district court abused its discretion in finding that Keandra did not rebut the presumptions in NRS 128.109(1)(a) when the preponderance of evidence in the record clearly revealed otherwise.

Conclusion

The Nevada Supreme Court will not terminate a parent’s rights solely because the parent refuses to admit abuse because a forced admission violates the parent’s Fifth Amendment right. The district court violated Keandra’s Fifth Amendment right when it terminated her parental rights solely because she refused to admit she caused C.L.B. Jr.’s injury. Further, the district court lacked substantial evidence to establish that terminating Keandra’s parental rights was in the best interest of the children. Keandra provided a preponderance of evidence to successfully rebut NRS 128.109(1) and (2). Thus, the Court reversed the district court’s order terminating Keandra’s parental rights.

¹⁸ NEV. REV. STAT. § 128.105(1)(b)(3) (2017).

¹⁹ NEV. REV. STAT. § 128.105(1)(b)(6)(I)-(IV) (2017).

²⁰ NEV. REV. STAT. § 128.109(1)(a) (2015).

²¹ NEV. REV. STAT. § 128.109(1)(b) (2015).