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Summary of In re Parental Rights as to J.D.N., 128 Nev. Adv. Op. 44

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In re Parental Rights as to J.D.N., 128 Nev. Adv. Op. 44 (August 30, 2012)[1]

FAMILY LAW – TERMINATION OF PARENTAL RIGHTS

Summary

The Court considered whether an objection to the admission of an entire set of documents as hearsay preserved the issue for appeal. Second, the Court considered what burden of proof should be used to rebut the parental-fault and child's-best-interest presumptions found in NEV. REV. STAT. § 128.109. Finally, the Court considered if substantial evidence supported the decision to terminate parental rights and if the district court had considered all required factors.

Disposition/Outcome

Records filed with one division of a court for one proceeding are not automatically part of the record in a different division for a different proceeding. Such records may be objected to as hearsay. However, a hearsay objection must be made to specific portions rather than an entire file. Therefore, the objections to the entire juvenile file in this case were improper and effectively waived.

The burden of proof to rebut the parental-fault and child's-best-interest presumptions found in NEV. REV. STAT. § 128.109 is a preponderance of the evidence. The family division of the district court did consider all necessary factors in its decision to terminate parental rights even though the court did not explicitly list the factors in its opinion. The district court's decision was supported by substantial evidence.

Factual and Procedural History

Quiana, the first appellant, is the mother of the six minor children in question, and Arthur, the second appellant, is the father of five of those children. In May 2007, Quiana was arrested and charged with child abuse, and later pled no contest. At the time of her arrest, Arthur was in prison. The Department of Family Services (DFS) placed the children with Quiana's mother while developing a case plan to reunify Quiana with her children.

Quiana's difficulties following the case plan included not providing proof of employment, not showing an adequate home, not completing her counseling sessions, and visiting her children only sporadically. Due to these difficulties, DFS filed a petition to terminate parental rights in August 2009. After the filing, Arthur choked Quiana in front of the children and pled guilty to domestic violence charges.

Since the children had been removed from their home for fourteen of the last twenty months, the family division of the district court found presumptions that the parents had "demonstrated only token efforts to care for the child[ren]," and that it would be in the best

[1] By Timothy A Wiseman.

interests of the children to terminate the parental rights.[2] Since Quiana and Arthur had not substantially followed the reunification plan, it also found evidence of "failure of parental adjustment."[3] The juvenile court record was admitted in its entirety despite an objection that it contained hearsay. The objection did not specify which portions constituted hearsay. The family division of the district court found that Quiana and Arthur failed to rebut the presumptions, that parental fault existed, and that it was in the children's best interests to terminate parental rights. Quiana and Arthur appealed.

Discussion

I. A hearsay objection can be effective even when the document is part of the record of a division of a court in a different proceeding, but it must be specific both as to the grounds of objection and to the particular portion of the document.

DFS argued that the juvenile court record was not subject to hearsay objections because it was already part of the records for the family division of the district court. However, these records were formed with the juvenile division of the district court as part of a separate proceeding. They did not form part of the records for the family division of the district court in this proceeding and were subject to objections for hearsay.[4]

Although these records were vulnerable to objections for hearsay, the objection needed to be specific as to both the grounds and the specific portions of the document for which the objection was offered.[5] Since this objection was not specific, it was waived on appeal.

II. The burden of proof used in rebutting presumptions found in Nev. Rev. Stat. § 128.109 is a preponderance of the evidence.

Although Nev. Rev. Stat. § 128.109 does not specify the burden of proof that is to be used in rebutting presumptions raised under it, termination of parental rights cases are generally civil proceedings.[6] In civil matters, a presumption can generally be rebutted by a preponderance of the evidence.[7] The Court contrasts this with the burden of clear and convincing evidence that is placed on the petitioner seeking termination of parental rights, and points out that the language of the statute places this burden on the petitioner only. The Court also highlights that placing this

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[2] NEV. REV. STAT. § 128.109 (2007).
[3] *Id.*
[4] In making this ruling, the Court distinguished this case factually from Matter of Parental Rights as to N.D.O, 121 Nev. 379, 115 P.3d 223 (2005).
[5] GEORGE E. DIX. ET AL., MCCORMICK ON EVIDENCE §52 (Kenneth S. Broun ed., 6th ed. 2006).
[6] NEV. REV. STAT. § 128.090(2) (2007).
[7] *Id.* § 47.180(1).

heightened burden on the petitioner helps protect the parents' right to raise their children and is consistent with the position adopted by some other states.[8]

III. The family division of the district court considered all necessary factors and supported its order terminating parental rights with substantial evidence.

Statute outlines certain factors that must be considered in a termination of parental rights case when the child is not in the parents' custody and when certain presumptions lay the burden to present evidence regarding these factors on the parent.[9] In this case, the family division of the district court concluded that some presumptions applied, that Quiana and Arthur had failed to overcome the presumptions, and that there was parental fault. It further expressed concern about whether Quiana had addressed the problems that led to her whipping two of her children and concerns that she did not genuinely participate in initial counseling sessions. It also concluded that neither Quiana nor Arthur were prepared to receive custody. The record on appeal substantially supported all of these findings and showed that all necessary factors were considered even though the order did not explicitly list them.

Conclusion

The Court determined that the hearsay argument regarding the juvenile record had not been sufficiently specific and could not be sustained. The Court further clarified that when a presumption is shown under NEV. REV. STAT. § 128.109 against a parent that it can be rebutted by a preponderance of the evidence. Finally, the Court found that the family division of the district court had considered all necessary and appropriate factors in reaching its decision and had supported its decision with substantial evidence. Therefore, the Court affirmed the decision terminating parental rights.

[8] *See* In re Interest of Kyle S.-G., 533 N.W.32 794, 792-99 (Wis. 1995), Interest of L.D.B., 891 P.2d 468, 471 (Kan. Ct. App. 1995).
[9] Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1426, 148 P.3d 759, 765 (2006).