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William S. Habdas
Nevada Law Journal

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Recommended Citation

Habdas, William S., "Summary of In re Parental Rights as to C.C.A., 128 Nev. Adv. Op. No. 15" (2012).
Nevada Supreme Court Summaries. 183.
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FAMILY LAW – TERMINATION OF PARENTAL RIGHTS

Summary

An appeal of a district court's order terminating the appellant's parental rights.

Disposition/Outcome

The Court reversed the district court's order terminating appellant's parental rights and remanded the case to the district court to enter its findings.

Factual and Procedural History

The state of Nevada removed the appellant's minor child, placing the child in the care of the Division of Child and Family Services ("DCFS"). DCFS petitioned the district court to terminate the appellant's parental rights, listing six grounds of alleged parental fault. After a two-day bench trial, including witnesses and evidence supporting both parties, the district court requested closing arguments in writing and reserved ruling on the termination petition. Subsequently, the parties submitted closing arguments, and the district court entered a summary order terminating the appellant's parental rights.

The district court's written order closely followed DCFS's termination petition and purported to set forth findings of fact. The order stated that terminating the appellant's parental rights was in the best interests of the child. The order then listed six grounds of parental fault,² which perfectly mirrored the termination statutory provisions for parental fault,³ without explanation as to any corresponding evidence.

Discussion

Justice Douglas wrote for the Court sitting in a three-justice panel. Appellant argued that the court failed to name any specific factual findings in its written order; therefore, the decision to terminate his parental rights was not supported by substantial evidence. In contrast, DCFS argued that the order made explicit findings and that DCFS established by clear and convincing evidence that the termination of the appellant's parental right was warranted.

Termination proceedings implicate a parent's fundamental rights in the care and custody of his or her child. In order to guard the rights of the parent and the child, Nevada created a statutory scheme intended to assure parental rights are not erroneously terminated, and that the child's needs are protected.⁵ Therefore, when petitioning to terminate a parent's parental rights, a petitioner must demonstrate by clear and convincing evidence that termination is in the child's best interest and that parental fault exists.⁶

When substantial evidence supports a district court's order to terminate parental rights, the appellate court will uphold it.⁷ The clear and convincing standard of proof underscores the importance of the district

¹ By William S. Habdas.

² The six bases for fault were (1) appellant abandoned the child, (2) appellant has neglected the child, (3) appellant is an unfit parent, (4) appellant has failed parental adjustment in that he was unwilling or unable to correct the conditions which led to removal of the child, (5) there was a risk of injury to the child if the child was returned to the appellant, and (6) appellant has only made token efforts to support the child or avoid being an unfit parent.

³ See NEV. REV. STAT. §§ 128.012, 128.0126, 128.014, 128.018, 128.105(2)(e)-(f) (2007).

⁵ NEV. REV. STAT. §§ 128.005(1), 128.005(2)(a) (2007).

⁶ See *id.* §§ 128.090(2), 128.105.

⁷ *In re Parental Rights as to A.J.G.*, 122 Nev. 1418, 1423, 148 P.3d 759, 763 (2006).

court's fair and independent fact-finding.⁸ In order to conduct proper appellate review, the Court requires the record include the factual findings that are necessary to determine whether the conclusions of the district court are supported by substantial evidence.⁹

In this case, the district court made no oral findings, nor did the subsequent written termination order reference specific factual evidence presented by the parties during the two-day bench trial. Instead, the order simply recited the statutory grounds required to terminate a parent's parental rights. The Court held this insufficient because the lower court did not explain, based on the record evidence, why the statutory grounds for termination existed.

Because the district court failed to identify—in writing or on the record—the factual bases that support its termination order, the Court could not determine whether substantial evidence supported the district court's decision. Therefore, the Court reversed the district court's order terminating appellant's parental rights and remanded this case to the district court to enter its findings.¹⁰

Conclusion

The petitioner in a termination proceeding must prove by clear and convincing evidence that the termination is in the best interests of the child and that parental fault exists. If the district court fails to make any findings concerning this standard of proof in its order or on the record, the Court will be unable to determine on appeal whether substantial evidence supports the district court's ruling. Therefore, the Court will reverse the order and remand the matter to the district court to enter its findings.

⁸ NEV. R. CIV. P. 52(a) (stating that when rendering a decision “[i]n all actions tried upon the facts without a jury[,] . . . the court shall find the facts specially and state separately its conclusions of law”).

⁹ See *In re Edward B.*, 558 S.E.2d 620, 632-33 (W. Va. 2001) (holding that a lower court's failure to comply with statutes and rules of procedure when issuing a final order impedes a proper appellate review); *In re T. R. M.*, 303 N.W.2d 581, 583-84 (Wis. 1981) (explaining that adequate findings are required to facilitate review by an appellate court).

¹⁰ See *Robison v. Robison*, 100 Nev. 668, 673, 691 P.2d 451, 455 (1984) (remanding the case to the lower court because the court's findings failed to indicate the factual basis for its final conclusions).