

1-1-2004

## Summary of In the Matter of Parental Rights as to D.R.H.

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*Nevada Law Journal*

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### Recommended Citation

Hall, Jeff, "Summary of In the Matter of Parental Rights as to D.R.H." (2004). *Nevada Supreme Court Summaries*. Paper 677.  
<http://scholars.law.unlv.edu/nvscs/677>

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*In the Matter of Parental Rights as to D.R.H., 92 P.3d 1230 (2004).<sup>1</sup>*

**FAMILY LAW**

**Summary**

Appeal of a District Court order terminating the parental rights of both parents to their three children. The Division of Child and Family Services (DCFS) petitioned the district court to terminate the parental rights Vincent G. and Cristan H. after trying to return the children to the parents custody for two and half years. Vincent and Cristan appealed the district court's decision to terminate their parental rights on the grounds that the statute relied on by the district court is unconstitutional.

**Disposition/Outcome**

Affirmed. The Supreme Court held that Nevada statute relied on to terminate the parental rights of Vincent and Cristan is constitutional. Further, there is substantial evidence supporting the decision of the trial court to terminate the parents rights.

**Factual and Procedural History**

Cristan is the mother of three minor children and Vincent is the father of two of the children. In April of 2000, the three children were found playing near a busy highway without parental supervision. Officers went to Cristan's home where they found her asleep. Drug testing later revealed that she had used Amphetamines. The following day, the youngest child who was four years of age, stopped breathing and was taken to the hospital. The attending physician requested DCFS to place the child in protective custody because of injuries to the child indicative of child abuse. DCFS took legal custody of all three children but gave physical custody to Vincent. In the summer of 2000, DCFS removed the children from Vincent's custody because of his third domestic violence charge and his failure to comply with interstate placement restrictions. DCFS tried to return custody of the children to the parents for two and half years after which it petitioned the district court for termination of Vincent and Cristan's parental rights. After a termination proceeding, the district court ordered the termination of Vincent and Cristan's parental rights.

Vincent appealed the decision of the district court, arguing that NRS 128.109(2) is unconstitutional because it infringes on his due process rights. The statute provides that there is a presumption that it is in the child's best interest to have parental rights terminated when the child has been outside of the home for more than 14 months in any 20 month period for reasons outlined in NRS 432B. NRS 432B discusses the removal of children from parental custody because of abuse or neglect.

**Discussion**

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<sup>1</sup> By Jeff Hall

The court first found that a parent's interest in raising his or her child is a fundamental right.<sup>2</sup> Accordingly, the court applied a strict scrutiny standard in deciding the constitutionality of the statute.<sup>3</sup> Under this standard of review, the statute must be narrowly tailored to serve a compelling state interest.<sup>4</sup> The court then examined the state interest involved in terminating parental rights pursuant to NRS 128.109(2) and then whether that interest is narrowly tailored.

The court found that the policy behind the statute is to have children permanently placed rather than remain in foster care.<sup>5</sup> The court stated that sound policy dictates that the state should evaluate whether continuing attempts to return a child to his or her natural parents are beneficial as oppose to terminating parents rights and placing the child in a safe, stable environment. Without the statute, the danger is that a child could drift through the foster care system for a significant amount of time. Therefore, the state is addressing a compelling state interest through the statute.

Next, the court held that the statute was narrowly tailored to address that state interest. The statute only applies when the child is removed from the home for child abuse or neglect and the presumption created by the statute is a rebuttable. The statute must also be read in conjunction with NRS 128.105, which requires that the court examine the child's best interest and find grounds for termination such as abandonment, neglect, or unfitness of parent. Given all the considerations the court must make and the interest in placing children in a stable environment, the court found NRS 128.109(2) constitutional.

Applying the facts in the case, the court found that Vincent and Cristan's parental rights were properly terminated by the district court. The court went through the parental fault factors laid out in NRS 128.105, and while only needing to find one, it found five: Neglect, unfitness of parent, failure of parental adjustment, risk of seriousness injury, and token efforts. The court found clear and convincing evidence that Cristan had not properly supervised the children, left them unclean, and the children were injured while in her care. Cristan had also used drugs during the pregnancy of at least one of the children and also used drugs while the children needed supervision. The court found clear and convincing evidence that Vincent had not made legitimate efforts to stay in touch with the children or to change his circumstances in a way that would allow him to take custody of the children. Vincent had also had three domestic violence charges, the third a felony. Many of this violence occurred in the presence of the children and endangered the children. Accordingly, there was clear and convincing evidence supporting the district court's decision to terminate Vincent and Cristan's parental rights.

The court also found clear and convincing facts that it was in the best interest of the children to terminate parental rights. Vincent and Cristan were not capable of providing a stable environment for the children to grow and be nurtured. The children did not get adequate physical or emotional support from the parents. A clinical psychologist also testified that the parents demonstrated self-destructive and self-indulging behavior with no care for the well-being of the children. The district court also

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<sup>2</sup> Matter of Parental Rights as to J.L.N., 118 Nev. 621, 625, 55 P.3d 955, 958 (2002).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

found that the children were making progress in the foster home they had been in for two years.

### **Conclusion**

NRS 128.109(2) is constitutional as it serves a compelling state interest and it is narrowly tailored to meet that state interest. Good public policy dictates that children should have a stable environment to grow up in. A presumption that it is in the child's best interest to terminate parental rights when he or she has lived outside of the parent's home for a period of 14 months during any 20 month period helps the state advance this policy without improperly infringing on fundamental rights.