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Summary of In re Parental Rights as to A.L., 130 Nev. Adv. Op. 91

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FAMILY LAW: PARENTAL RIGHTS

Summary

The Court determined that (1) when seeking to maintain parental rights, parents have a right to bring material evidence rebutting a NRS 432B.450 presumption that a child is in need of protection; and (2) that district courts cannot rely on juvenile court findings of intentional abuse to terminate parental rights where such evidence has been improperly excluded.

Background

In April 2010, a Clark County Department of Family Services (DFS) investigator interviewed appellant Keandra regarding anonymous allegations of child abuse. In spite of Keandra's assertions that her one-year-old child, C.B., had been accidentally burned on the face by an iron, DFS filed a petition for protective custody under NRS Chapter 432B, alleging either physical abuse or negligent supervision.

At an adjudicatory hearing, the hearing master took testimony from a medical examiner (who opined that C.B.'s injury was inconsistent with an accident), while excluding a rebutting report from C.B.'s treating physician on the grounds that it was not a certified copy. The hearing master then recommended sustaining the abuse and neglect petition on the grounds that Keandra physically abused C.B. The juvenile court affirmed the recommendation and concluded that the injury was not accidental.

DFS then petitioned to terminate Keandra's parental rights. In spite of Keandra's satisfactory progress at two six-month reviews, DFS continued to maintain its recommendation to terminate her parental rights because she refused to admit that she had intentionally abused C.B. Following trial, the district court, relying on the hearing master's findings and the juvenile court's ruling that Keandra was at fault for C.B.'s injuries, terminated Keandra's parental rights. Keandra appealed.

Discussion

"A party petitioning to terminate parental rights must establish by clear and convincing evidence that (1) termination is in the child's best interest, and (2) parental fault exists."² Under NRS 432B.450, a presumption that a child needs protection is raised when an expert testifies that injuries would not have occurred but for "negligence or a deliberate but unreasonable act or failure to act by the person responsible for the welfare of the child." To rebut this presumption, the parent must establish by a preponderance of the evidence that parental fault does not exist and termination is not in the child's best interest.³

Here, Keandra asserted that the treating physician's rebutting report was improperly excluded for not being a certified copy, leading the district court to find abuse without hearing material evidence intended to rebut the presumption the child needed protection. As DFS did not

¹ By Stephanie Bedker.

² *In re Parental Rights as to A.J.G.*, 122 Nev. 1418, 1423, 148 P.3d 759, 762 (2006).

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

address this argument on appeal, the court concluded that DFS confessed error. The district court's findings of parental fault which justified termination of Keandra's parental rights were all premised on her failure to comply with a portion of her case plan requiring her to admit to intentionally abusing her child.

Conclusion

Therefore, since the finding of intentional abuse was based on an improper exclusion of rebutting evidence, the Court reversed the ruling of the district court's termination order and remanded the matter for a new trial.