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### In re Parental Rights as to S.L., 134 Nev. Adv. Op. 59 (Aug. 2, 2018)

Maliq Kendricks

*University of Nevada, Las Vegas – William S. Boyd School of Law*

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FAMILY LAW: TERMINATION OF PARENTAL RIGHTS

**Summary**

The Court determined that termination of parental rights is valid when parents fail to take necessary remedial action for reunification with their children and the termination is in the best interest of the children pursuant to NRS 128.105(1)(a).

**Background**

Donald B. and Melissa L. are the parents of four children; the oldest of which is named S.L. In December 2013, S.L. appeared at school with a black eye and disclosed to a friend that Donald had hit her. A subsequent investigation revealed that S.L. had multiple abrasions and bruises that were consistent with abuse, and resultantly S.L. and her siblings were removed from their parents' home and placed in the custody of Clark County Department of Family Services (DFS) in January 2014. In May 2014, the children were placed in a foster home. There, the children made disclosures to their foster mother about the nature and extent of the abuse S.L. endured while in their parents' home.

DFS filed a protective custody petition alleging that the children were in need of protection. Donald and Melissa entered pleas of no contest to the petition and were given court-approved case plans, which required them both to take individual remedial action to ensure reunification with their children. Among the many remedial actions enumerated under the parents' individual case plans, both plans not only required that each parent acknowledge that S.L. was physically abused, but also that the parents collectively develop a plan for preventing reoccurring abuse.

Although Donald and Melissa engaged in most of the requirements of their individual case plans, by the time of the permanency and placement review hearing regarding their children in January 2015, DFS recommended termination of parental rights on the basis that the parents had not provided an explanation for S.L.'s injuries or a plan for preventing their reoccurrence. Thereafter, a termination trial ensued.

In December 2016, the district court entered an order terminating Donald and Melissa's parental rights. The court found: (1) parental fault based on clear and convincing evidence that Donald had physically and mentally abused S.L. over a period of years; (2) the parents' therapy did not address the physical abuse; (3) neither parent had shown the insight or behavioral change to protect the children from future abuse; and (4) the presumptions under NRS 128.109 applied because the children had been in foster care for 30 months. Donald and Melissa appealed.

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<sup>1</sup> By Maliq Kendricks.

## **Discussion**

### *Fifth Amendment rights*

On appeal, Donald and Melissa argued that the district court violated their Fifth Amendment privilege against self-incrimination by finding parental fault based on their failure to admit to the abuse of S.L. Conversely, DFS argued there was no Fifth Amendment violation because even though parents could not be compelled to incriminate themselves, they could be required to demonstrate that the children would be safe in their care. The Court reasoned that because the evidence of abuse was significantly more egregious and pervasive than precedent, the parents were considered high risk reoffenders, and the abuse was not meaningfully addressed in their mandatory therapy sessions, Donald and Melissa failed to prove that reunification with their children would be safe. Resultantly, the Court affirmed the district court's decision, explaining that the district court did not terminate Donald and Melissa's parental rights merely because they refused to admit to child abuse but instead because they did not engage in meaningful therapy designed to ensure that the children could be safe if returned to their home.

### *Parental fault*

Here, Donald and Melissa argued that the district court's finding that they failed to rebut NRS 128.109(1)(a)'s presumption with a preponderance of the evidence was incorrect. The statute provides that if a child is placed outside the home for 14 of any 20 consecutive months, it must be presumed that the parent has demonstrated only token efforts toward reunification.<sup>2</sup> Although S.L. and her siblings were separated from their parents for 30 consecutive months, Donald and Melissa asserted that they rebutted NRS 128.109(1)(a)'s presumption of token efforts because they actively engaged in the requirements of their case plans and their failure to reunify with their children within the statutory time frame resulted solely from their refusal to admit to the abuse. Nonetheless, the Court determined that although Donald and Melissa participated in services under their case plans, they did not meaningfully address the abuse in therapy, and thus, their efforts for reunification with their children were feeble.

Donald and Melissa also contended that the district court erred by concluding that termination of parental rights was in the children's best interests because the evidence demonstrated that the parents had completed the assessment and counseling requirements of their case plans, their younger three children wanted to return home, and their therapist opined that reunification was in the children's best interests. However, applying NRS 128.105(1)(a)<sup>3</sup>, the Court disagreed. The statute explains that for the district court to terminate parental rights, it must be in the best interest of the children. The Court found that because the children's foster family had provided them a safe and loving home for over two years, the children were doing well and had bonded with and integrated into the foster family, and the foster parents were willing to adopt them, the substantial evidence

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<sup>2</sup> NEV. REV. STAT. § 128.109(1)(a) (2017).

<sup>3</sup> NEV. REV. STAT. § 128.105(1)(a) (2017).

supported the district court's decision that termination of Donald and Melissa's parental rights was in the children's best interests.

**Conclusion**

The Court affirmed the district court's decision, finding that Donald B. and Melissa L. failed to engage in meaningful therapy to ensure that their children could be safe if returned to their home, failed to take more than token efforts to reunify with their children, and that termination of their parental rights was in the best interest of their children.