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In re Parental Rights as to G.R.S., 139 Nev. Adv. Op. 16 (July 6, 2023)

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PARENTAL RIGHTS CANNOT BE TERMINATED SOLELY BECAUSE A PARENT
STRUGGLES WITH SUBSTANCE ABUSE.

Summary

A parent’s rights to their children cannot be terminated because a parent struggles with substance abuse but is able to safely and effectively parent their children.

Background

A father who admittedly struggled with substance abuse had his parental rights terminated. In the order for termination it was found the termination was in the best interest of the child, and that the father was unfit on four different grounds: “(1) neglect/parental unfitness, (2) failure to adjust to the circumstances that led to the removal, (3) token efforts, and (4) risk to the child’s wellbeing if returned to [his] care.” The father appealed the termination.

Discussion

To terminate a parent’s rights a ground of parental unfitness must exist, and the termination must be in the best interest of the child. The evidence relied on must be substantial and the review of decisions to terminate parental rights will be subject to close scrutiny.

The parental-fault findings are not supported by substantial evidence.

Parental unfitness

Nevada law defines an unfit parent as “any parent of a child who, by reason of the parent's fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support.”² One of the factors to consider is whether a parent abuses drugs, liquors, or substance that “render[] the parent consistently unable to care for the child.”³ Unfitness is not established by substance abuse alone. Instead, substance abuse needs to lead to a parent being unable to consistently care for their child to support a finding of parental unfitness. In this case, the substance abuse by the father was not interfering with his ability to parent his child. Even if it were, the substantial progress made by the father did not support the finding that he was unfit as a parent. The District Court improperly rushed the trial for termination of parental rights and had the authority to continue the trial to determine whether the father was going to maintain his progress. Because the termination of parental rights is permanent, the District Court needed to postpone the trial until the father could complete the various programs he was enrolled in.

Token efforts

When a child is not in the care of their parents for 14 of any 20 consecutive months, it must be presumed the parents “have demonstrated only token efforts to care for the child.”⁴ A preponderance of the evidence may rebut this presumption. The father in this case, “fully complied with the requirements placed on him by DFS, including finding his own domestic violence class, drug testing clean three times weekly, and consistently visiting and engaging appropriately with G.R.S.”⁵ Additionally, he is financially capable of caring for his child, bought groceries for the

¹ By Emily Kunz.

² Nev. Rev. Stat. 128.018

³ Nev. Rev. Stat. 128.106(1)(d).

⁴ Nev. Rev. Stat. 128.105(1)(b)(6).

⁵ In the Matter of Parental Rights as to G.R.S., 531 P.3d 1249, 1258 (Nev. 2023).

foster family caring for his child, and even offered them financial support. This evidence rebuts the presumption of only token efforts having been made by the father.

Risk of serious injury

A parent can be deemed unfit if there is a risk of serious injury should the child be “returned to, or remain[] in, the home of his or her parent or parents.”⁶ The District Court found that exposure to drug use was a risk of serious injury and supported finding this father as unfit. However, the father had been sober since November 2020 and was participating in a drug court program. The Supreme Court found that the record did not support that the father ever posed a risk of serious injury to his child.

The best interest finding is not supported by substantial evidence.

When terminating parental rights, the “primary consideration” is whether the termination is in the best interest of the child. It was not here.⁷ The child continued to call her father “Dad” and continued to want to be in his care. The child’s attorney, representing the child’s interests, argued that termination was not in the best interests of the child. There was no other evidence to corroborate the finding that termination was in the child’s best interest.

Conclusion

A father’s rights to his child should not be terminated solely because he has a substance abuse problem. The termination in this case was not supported by parental unfitness nor was the termination in the best interest of the child. The termination of this father’s parental rights was reversed.

⁶ Nev. Rev. Stat. 128.105(1)(b)(5).

⁷ Nev. Rev. Stat. 128.105(1).