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In Re: Parental Rights as to R.T., K.G-T., N.H-T. and E.H-T, 133 Nev. Adv. Op. 38 (June 29, 2017)

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FAMILY LAW

Summary

The Court reviewed an appeal based on the termination of an individual’s parental rights. The Court held that “[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.” Relying on previous decisions, the Court confirmed that poverty may not be a factor when it determines “parental fault,”² but the Court may consider a parent’s compliance with a case plan. Here, the Court reaffirmed the district court’s decision because it relied on “substantial evidence” that Appellant did not follow her case plan, despite the numerous services offered to her, rather than Appellant’s poverty.

Background

Between October 2012 to April 2013, Washoe County Department of Social Services (“WCDSS”) received complaints related to Appellant providing an unfit living situation for her four children. WCDSS removed Appellant’s three children and placed them in foster care. In 2014, Appellant had a fourth child who, due to an unfit living environment, was also removed from Appellant’s custody. In both cases, Appellant received a case plan that required her to obtain a residence and employment, and to demonstrate that she could care for her children. Appellant had access to a “families in need” program that provides housing assistance and employment. Appellant also received mental health evaluations and therapy.

Nevertheless, WCDSS reported that Appellant did not make a reasonable effort to complete her case plan. Ultimately, the district court held that: 1) “[Appellant] failed to overcome NRS 128.109’s presumptions” as to her three oldest children; 2) “[Appellant] demonstrated only token efforts to care for her children under NRS 128.105(1)(b)(6)”; and 3) “the best interests of the children were served by termination.” Appellant appealed arguing that her parental rights were terminated because she lived in poverty.

Discussion

The district court accurately decided to terminate Appellant’s parental rights, not based on Appellant’s poverty, but instead because “substantial evidence” demonstrated that Appellant “made only token efforts toward reunification” with her children. Appellant argues that she did not “serious[ly] harm” her children, so her parental rights should not have been terminated.

¹ By Brittini Griffith.

² See *In re Parental Rights as to Daniels*, 114 Nev. 81, 953 P.2d 1 (1998); *Cooley v. Div. of Child & Family Servs. of the Nev. State Dep’t of Human Res.*, 113 Nev. 1191, 946 P.2d 155 (1997); *In re Parental Rights as to Bow*, 113 Nev. 141, 930 P.2d 1128 (1997).

However, this argument is ineffective because parental rights may be terminated absent a finding of “serious harm.”

Courts terminate parental rights when the petitioner “establish[es] by clear and convincing evidence that (1) termination is in the child’s best interest, and (2) parental fault exists.” In order for parental fault to exist, at least one of the following factors must be established: “abandonment of the child; neglect of the child; unfitness of the parent; failure of parental adjustment; risk of injury to the child if returned to, or if left remaining in the home of the parents; and finally, only token efforts by the parents.”³ While Nevada law prevents courts from a finding of “parental fault” based solely on a parent’s financial situation,⁴ a court still has the ability to investigate a parent’s lifestyle or living situation as it relates to a case plan.

Here, the district court terminated Appellant’s parental rights because Appellant did not follow her case plan, despite the numerous services offered to her. The supporting evidence included Appellant’s “failure to: (1) find an apartment after receiving a Section 8 housing voucher from the Reno Housing Authority, (2) apply for Victims of Crime Act funds, (3) submit the documentation for low-income energy assistance.” Additionally, Appellant voluntarily quit the employment she was provided on numerous occasions, despite WCDSS’s assistance with mental health treatment.

Conclusion

After examining Appellant’s failure to abide by her case plan which required her to obtain a residence, employment, and show the ability to care for her children, the district court correctly terminated Appellant’s parental rights.

³ In re Termination of Parental Rights as to N.J., 116 Nev. 790, 801, 8 P.3d 126, 133 (2000); *See also* NEV. REV. STAT. § 128(1)(b)(1)–(6).

⁴ *See* NEV. REV. STAT. § 128.106(1) (2016).