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In re Parental Rights as to T.L., 133 Nev. Adv. Op. 97 (Dec. 7, 2017)

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FAMILY LAW: PARENTAL RIGHTS

Summary

The Court determined that parents who have terminated their parental rights do not have standing to challenge a district court's placement of their child.

Facts and Procedural History

Respondent Washoe County Department of Social Services ("WCDSS") removed a minor child from the care of her parents and terminated their parental rights. Although WCDSS had found a family for the minor child, they stipulated to allow Petitioner Tonya M.—who wanted the child to be placed with family—to participate in a contested placement hearing before terminating her parental rights. In that hearing, Tonya stipulated that if she did not relinquish her parental rights, they would be terminated by a district court order and that she waived her right to challenge that order. Tonya failed to relinquish her parental rights after the district court placed the minor child with the adoptive family rather than relatives. Tonya filed this appeal challenging the district court's placement decision.

Discussion

Tonya's opening brief did not challenge the termination of her parental rights; instead, it addressed only the district court's failure to "make the written findings of fact this court required in *Clark County District Attorney v. Eighth Judicial District Court*."² First, the Court addressed the issue of Tonya's standing to bring the appeal. In order to have standing, the district court would have had to adversely and substantially affect Tonya's legal rights.³ Having had her parental rights terminated, the Court concluded that Tonya lacked an affected legal right and, therefore, lacked standing to challenge the placement decision.

Tonya's parental rights have been terminated

The Court found that the only right that Tonya asserted was her parental right to make decisions related to her child's upbringing. Tonya's parental rights had, however, been terminated. Moreover, Tonya not only failed to contest the termination order, but also expressly waived her right to do so. Accordingly, "the parent-child relationship ha[d] been severed."⁴

¹ By Steven Kish

² 123 Nev. 337, 348, 167 P.3d 922, 929 (2007).

³ See *Estate of Hughes v. First Nat'l Bank of Nev.*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994); *Webb v. Clark Cty. Sch. Dist.*, 125 Nev. 611, 617, 218 P.3d 1239, 1244 (2009).

⁴ *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011); *In re Parental Rights as to N.D.O.*, 121 Nev. 379, 384, 115 P.3d 223, 226 (2005).

Tonya lacks standing to challenge the district court's placement order

WCDSS successfully argued that, because her parental rights had been terminated, Tonya did not have an interest in the district court's decision which would give her grounds to appeal. Tonya had the opportunity to negotiate the stipulation with WCDSS to retain her ability to dispute the order of termination. The Court expressly indicated that the termination of parental rights could have been contingent upon the child's placement with a relative. By failing to negotiate accordingly or contest the termination in her brief, Tonya "relinquished the only interest in her child that could render her aggrieved by the district court's order declining to place the child with her relative."

The Court's prior order denying writ relief did not confer standing on Tonya

Tonya had previously petitioned the Court for a writ of mandamus, which it denied because the district court order terminating her parental rights was a final, appealable order. Having an appealable order, Tonya was precluded from being awarded writ relief.

Tonya relied on the order denying writ relief to try to establish standing. The Court held that the prior order addressed simply whether there was an appealable order that precluded writ relief, rather than concluding Tonya had standing to pursue such an appeal.

While concluding that Tonya lacked standing to challenge the district court's placement decision, the Court urged "parties and counsel negotiating such stipulations to ensure that the parents are fully aware of the rights they are forgoing when they agree to terminate their parental rights."

Conclusion

The Court dismissed Petitioner Tonya M.'s appeal finding that she lacked standing to bring the appeal because of her prior stipulation to terminate her parental rights, her waiver of the right to challenge the termination, and failure to challenge the stipulation or waiver on appeal.