

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PARENTAL
RIGHTS AS TO N.W.D., A MINOR,

No. 59190

MATTHEW J.A.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

FILED

JUL 27 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order terminating appellant's parental rights as to the minor child. Eighth Judicial District Court, Family Court Division, Clark County; Steven E. Jones and Bill Henderson, Judges.¹

Following a bench trial, the district court determined that termination of appellant's parental rights was in the child's best interest and found by clear and convincing evidence five grounds of parental fault: neglect; token efforts; risk of serious physical, mental, or emotional harm to the child if returned to appellant; failure of parental adjustment; and unfitness.² Appellant challenges the district court's order terminating his parental rights. Respondent filed a response, as directed.

¹The evidentiary hearing in this matter was held before district court Judge Bill Henderson and, at the conclusion of that hearing, Judge Henderson issued oral findings on the termination petition. Thereafter, district court Judge Steven E. Jones signed the written order terminating appellant's parental rights.

²While the district court also terminated the child's mother's parental rights, the mother is not a party to this appeal.

DISCUSSION

Standard of review

“[W]hen petitioning the district court to terminate a parent’s parental rights, a petitioner must demonstrate by clear and convincing evidence that termination is in the child’s best interest and that parental fault exists.” In re Parental Rights as to C.C.A., 128 Nev. ___, ___, 273 P.3d 852, 854 (2012). The decision to terminate parental rights “must be made in light of the considerations set forth in [NRS 128.105] and NRS 128.106 to 128.109, inclusive.” NRS 128.105. While this court will not reweigh a witness’s credibility, see generally Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004), because of the involvement of a parent’s fundamental liberty interest in a termination proceeding, we closely scrutinize the district court’s findings to determine whether the parental rights were properly terminated. Matter of Parental Rights as to N.J., 116 Nev. 790, 795, 801, 8 P.3d 126, 129, 133 (2000). An order terminating parental rights will be upheld when it is supported by substantial evidence. Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1423, 148 P.3d 759, 763 (2006).

Child’s best interest

When determining what is in the child’s best interest, the district court must consider the child’s continuing needs for “proper physical, mental and emotional growth and development.” NRS 128.005(2)(c). Here, the district court summarily found that termination of appellant’s parental rights would serve the child’s best interest because it would provide the child with a safe, stable, and healthy adoptive home. The district court’s failure to specify the factual basis for its ultimate conclusion, alone, warrants a reversal of the district court’s decision. See In re C.C.A., 128 Nev. ___, 273 P.3d 852.

To the extent that other findings made by the district court pertain to the child's best interest, we conclude that, nonetheless, any such findings are not supported by substantial evidence in the record. Specifically, appellant testified that he had regular telephone contact and visits with the child and wrote letters and sent cards to the child. Respondent failed to present any contradictory evidence. See Matter of Parental Rights as to Q.L.R., 118 Nev. 602, 607 n.9, 54 P.3d 56, 59 n.9 (2002) (citing to Staat v. Hennepin County Welfare Board, 178 N.W.2d 709, 713 (Minn. 1970) for the proposition that "if a parental relationship existed prior to a father's imprisonment and he continued this relationship to the best of his ability during incarceration through letters, cards, and visits where possible, . . . his parental rights would be preserved"). Moreover, there is no evidence that appellant did not have a meaningful parent-child relationship. See Matter as to Q.L.R., 118 Nev. at 608, 54 P.3d at 60 (determining that termination of parental rights was not appropriate, in part, because "[n]othing in the record support[ed] a finding that [the child] could not form a loving and supportive relationship with [appellant] in the future"). Accordingly, we conclude that the district court's findings regarding the child's best interest is unsupported by substantial evidence in the record.

Parental fault

A termination analysis requires that the district court find at least one basis of parental fault. NRS 128.105(2). Parental fault may be established by demonstrating a parent's unfitness. NRS 128.105(2)(c). An unfit parent is one who because of his fault, habit, or conduct toward the child or others fails to provide the child with proper care, guidance, and support. NRS 128.018. Thus, in considering whether to terminate parental rights, the district court must also consider, among other things,

the child's needs, the parent's efforts to adjust his circumstances, conduct or conditions, including maintaining regular visitation or contact with the child, support payments, if financially able to pay, and whether additional services would likely bring about lasting parental adjustment so that the child could be returned home within a predictable period. NRS 128.107.

Here, the district court found appellant to be unfit because he allegedly never supported the child and, based on his criminal history, appellant purportedly demonstrated that he was incapable of being a law-abiding citizen who would not put the child in harm's way. The district court further found that appellant's testimony about his drug use and prior conviction demonstrated that appellant posed a danger, that the courses appellant completed while in prison were insufficient, and that appellant lacked personal growth, failed to demonstrate remorse for his actions, and had not made any rehabilitative efforts of any consequence.³

These findings are not supported by substantial evidence. Regarding financial support, respondent failed to present any evidence that appellant had the means to provide financial support and that he failed to do so. See NRS 128.107(3)(a). Moreover, we conclude that the district court improperly relied on appellant's criminal history. While the district court may consider a parent's incarceration and the nature of the crime, the district court must also consider whether the parent's criminal conduct is directed at the child and whether continued interaction would threaten the child's physical, mental or emotional growth and development. See Matter as to Q.L.R., 118 Nev. at 607-08, 608 n.12, 54

³We conclude that the district court's remaining parental fault findings are not supported by substantial evidence in the record and thus cannot stand as a basis to terminate appellant's parental rights. See Matter as to A.J.G., 122 Nev. at 1423, 148 P.3d at 763.

P.3d at 58-59, 59 n.12 (concluding that the district court erred in finding that the duration of a parent's incarceration supported the termination of parental rights standing alone and noting that the parent's criminal conduct in that case was not directed at the child even though the parent had been convicted of second-degree kidnapping of the mother and child for six hours; nor was it shown that the child's physical, mental, or emotional growth and development would be threatened by continued interaction with the parent).

Here, there is no evidence in the record that appellant's crimes were directed at the child or that the child's physical, mental, or emotional growth and development were threatened by any continued interaction with appellant. Appellant testified that although the district court initially suspended his visitation rights with the child, those rights were ultimately restored and exercised by appellant. Also, the district court judge noted that, undisputedly, the paternal grandmother would continue to facilitate contact with the child and appellant. Cf. Matter of Parental Rights as to D.R.H., 120 Nev. 422, 92 P.3d 1230 (2004) (explaining that the district court properly considered the father's felony convictions for domestic violence in determining whether the father was unfit to parent, as the evidence presented to the district court demonstrated that the father was imprisoned for his third felony domestic violence conviction, the father's contact with caseworkers revealed his aggressive tendencies and inability to manage his anger, and that the father's behavior negatively impacted the children).

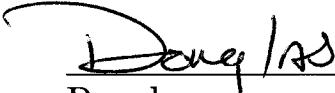
Regarding appellant's ability to adjust his circumstances, the record demonstrates that he completed courses in prison addressing such issues as criminal behaviors, drug abuse, time management, anger management, coping and life skills, and parenting. While the district


court found these programs insufficient, respondent never challenged their adequacy and it appears that the district court failed to consider that appellant did what he could while in prison. See generally Matter of Parental Rights as to J.L.N., 118 Nev. 621, 628, 55 P.3d 955, 960 (2002). Additionally, the DFS caseworker testified that she did not expect appellant to complete his case plan objectives until after he was released, and appellant testified that the prison did not offer individual counseling. Thus, it seems that any meaningful rehabilitation efforts would not occur until appellant was able to access the services that the Department of Family Services referred him to in his case plan.

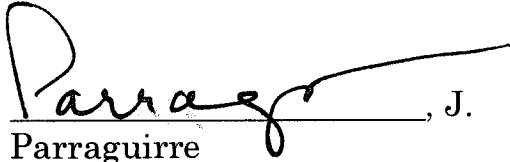
Also, appellant testified that he was scheduled to be released six weeks after the termination hearing concluded, that he had a job interview scheduled, and that he planned on trying to secure a job as a tattoo artist. While the caseworker testified that she did not personally believe that appellant would be able to complete the case plan objectives in a reasonable amount of time, the district court acknowledged that it would have approved a stipulation giving appellant additional time to complete his case plan had it been presented with one.

For the foregoing reasons, we reverse the district court's termination order and remand this matter to the district court to allow appellant additional time to comply with the case plan objectives.

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Bill Henderson, District Judge, Family Court Division
Hon. Steven E. Jones, District Judge, Family Court Division
Matthew J.A.
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk