IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PARENTAL RIGHTS AS TO: T.S.Y. AND S.Y., MINORS UNDER 18 YEARS OF AGE

SALEEM M.Y., NATURAL FATHER; AND TRANG T.D., NATURAL MOTHER,
Appellants,
vs.
STATE OF NEVADA DEPARTMENT OF FAMILY SERVICES,
Respondent.

No. 59317

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to set aside an order terminating parental rights. Eighth Judicial District Court, Family Court Division, Clark County; Steven E. Jones, Judge.

On September 2, 2010, the district court entered an order terminating appellants' parental rights as to their two minor children. Appellants did not timely appeal from that order. See NRAP 3A(b)(1); NRS 128.120. Over nine months later, on June 17, 2011, appellants filed a motion to intervene to set aside the order terminating their parental rights, to stay the adoption proceedings, and to appoint an attorney to represent the children. Respondent opposed the motion. After conducting a hearing, the district court entered an order denying the motion as untimely under NRCP 60(b). This appeal followed.

As an initial matter, respondent contends that this court lacks jurisdiction to consider this appeal and should dismiss it. Respondent asserts that the order is not appealable as a final judgment under NRAP

3A(b)(1) because the earlier termination order was the final judgment, and there can only be one final judgment in a proceeding. Respondent further contends that because the district court did not have legal authority to rule on appellants' motion to set aside the order terminating parental rights under NRS 128.120, this court does not have jurisdiction to hear an appeal on the order resulting from that motion.

We conclude that we have jurisdiction to consider this appeal. Appellants' June 2011 motion to set aside the termination order was based on NRCP 60(b), which governs a motion for relief from a judgment. A post-judgment order denying a motion for relief from a judgment under NRCP 60(b) is appealable. See Holiday Inn v. Barnett, 103 Nev. 60, 732 P.2d 1376 (1987). Moreover, even if the district court lacked authority to relieve appellants from the parental termination order under NRS 128.120, this court would nevertheless have appellate jurisdiction to review the denial of appellants' motion. See generally Argentena Consol. Mining Co. v. Jolley Urga, 125 Nev. 527, 216 P.3d 779 (2009) (considering on appeal whether the district court had jurisdiction to adjudicate an attorney lien in the underlying action). Accordingly, we deny respondent's request to dismiss this appeal for lack of jurisdiction.

Turning to the merits of the appeal, appellants contend that the six-month time bar under NRCP 60(b) should not apply because other proceedings involving the welfare of children have no such limitation, such as the modification of child custody and support. Appellants further contend that NRS 128.160(1) contemplates an action to set aside a parental termination order even after adoption, if such action is in the child's best interest. See NRS 128.160(1) ("In any action commenced by the natural parent of a child to set aside a court order terminating the

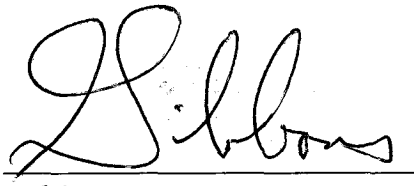
parental rights of the natural parent after a petition for adoption has been granted, the best interests of the child must be the primary and determining consideration of the court."). Appellants maintain that they received ineffective assistance of counsel when their appointed counsel failed to appeal the termination order, and that the district court abused its discretion in not staying the adoption proceeding and appointing independent counsel for the children. In response, respondent contends that appellants' motion was untimely under NRCP 60(b), and that appellants failed to set forth any factual or legal argument under the grounds listed in NRCP 60(b), such as mistake, excusable neglect, newly discovered evidence, or fraud. Respondent further contends that NRS 128.120 prohibits the district court from setting aside the termination order in this case.

NRCP 60(b)(1) provides that the district court may set aside a judgment based on mistake, inadvertence, surprise, or excusable neglect. Such a motion must be made within a reasonable time, and not more than six months after the notice of judgment was served. See NRCP 60(b). The district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion. Cook v. Cook, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

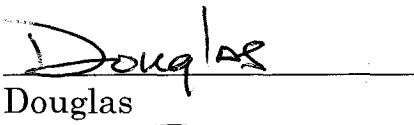
Based upon our review of the parties' pleadings and the hearing before the district court, appellants' motion falls within NRCP 60(b)(1), which includes the grounds of mistake, inadvertence, surprise, or excusable neglect. In particular, appellants asserted that the district court's refusal to continue the termination trial did not allow them adequate time to comply with their case plans, and that their trial counsel

neglected to appeal. Thus, appellants' motion was subject to the six-month time bar under NRCP 60(b). None of appellants' arguments change the effect of that time bar. Because appellants' motion was not filed within six months after the termination order, the motion was untimely. Accordingly, the district court did not abuse its discretion in denying appellants' motion to set aside the order terminating appellants' parental rights, and we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas

_____, J.
Saitta

cc: Eighth Judicial District Court, Dept. C
Dayvid J. Figler
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk