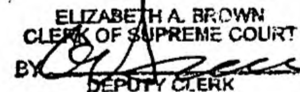
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO A.J.B., A MINOR. NATASHA F.B., Appellant, vs. STATE OF NEVADA DEPARTMENT OF FAMILY SERVICES; AND A.J.B., A MINOR, Respondents.	No. 84130 FILED DEC 15 2022 ELIZABETH A. BROWN CLERK OF SUPREME COURT BY DEPUTY CLERK



ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating parental rights. Eighth Judicial District Court, Family Court Division, Clark County; Margaret E. Pickard, Judge.[1]

Appellant Natasha F.B. argues that her procedural due process rights were violated when the district court entered the order terminating her parental rights without notice and an opportunity to be heard. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (providing a party must receive notice and have the opportunity to be heard to satisfy procedural due process). Reviewing this constitutional challenge de novo, *see id.*, we disagree and affirm the district court order.

Natasha first contends that she lacked proper notice because respondent the Department of Family Services (DFS) did not effectuate proper service of process. Specifically, she argues that DFS did not provide an adequate affidavit to support service by publication under NRS 128.070. We disagree. In the affidavit, DFS averred that it did not know where

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

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Natasha last resided and that DFS was conducting diligent searches concurrently with the affidavit, as permitted by NRS 432B.5902(2). While DFS did not aver that Natasha "resided in a certain place," that the "place is the last place in which [Natasha] resided to the knowledge of the affiant," or that Natasha "no longer resides at that place," as required by NRS 128.070(1)(a)-(c), we conclude that DFS substantially complied with NRS 128.070's form and content requirements; the purpose of the statute was met; and, regardless, Natasha had adequate notice of the hearing.[2] *See* NRS 128.070 (permitting service by publication when a parent cannot be found after due diligence upon an affidavit addressing four factors); *see also* *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664, 310 P.3d 569, 572 (2013) (holding that "form and content" provisions are those that "dictate who must take action and what information that party is required to provide"); *Leven v. Frey*, 123 Nev. 399, 408, 168 P.3d 712, 718 (2007) (providing that a party need only substantially comply with a statute's "form and content" requirements so long as the purpose of the statute is achieved).

[2]We need not address Natasha's arguments regarding NRCP 4.4(c) (addressing service by publication in civil actions) and EDCR 1.46(g) (setting forth additional service requirements for juvenile hearing master's findings and recommendations) because they conflict with NRS 432B.5902's service provision such that the statute controls. *See* NRCP 81(a) (providing that the rules of civil procedure "do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute"); *Joanna T. v. Eighth Judicial Dist. Court*, 131 Nev. 766, 770 n.1, 357 P.3d 932, 934 n.1 (2015) (providing that the NRCP does not apply to Chapter 432B proceedings when "a specific rule of procedure conflicts with a provision of NRS Chapter 432B," citing NRCP 4(i) as an example).

The record reflects that, at the time of Natasha's dispositional hearing in March 2020, her address was listed as 2252 McCoig Avenue, Las Vegas, NV 89119. And Natasha conceded in her motion to set aside the oral pronouncement of the termination of parental rights that she had resided at this address at some point, but she no longer resided there. At another hearing in October 2020, it was further revealed that Natasha had lacked stable housing for the previous six months, that she had stayed at times in a "known drug home," and that DFS did not know her address because she had stopped communicating with DFS. Thus, the district court had the information required by NRS 128.070(1) to allow for service by publication.

Further, Natasha does not dispute that she had legal notice of the hearing because her court-appointed counsel had notice of the termination hearing.[3] *See Huckabay Props., Inc. v. NC Auto Parts, LLC*, 130 Nev. 196, 208, 322 P.3d 429, 437 (2014) (holding that "in Nevada, '[n]otice to an attorney is, in legal contemplation, notice to his client'" (quoting *Lange v. Hickman,* 92 Nev. 41, 43, 544 P.2d 1208, 1209 (1976)); *McMurtry v. McMurtry*, 92 Nev. 630, 630-31, 555 P.2d 959, 959 (1976) (applying this doctrine in the family court context). And the record reflects that Natasha had actual knowledge of the hearing—a fact she does not dispute on appeal and conceded below—because she texted A.J.B.'s paternal

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[3]While the law permits the district court to order additional search efforts, we discern no abuse of discretion in the district court declining to do so in this case. *See* NRS 128.070(4) (providing that when personal service cannot be made, the district court "*may* require" additional searches to determine the whereabouts of the person to be served (emphasis added)). Natasha fails to cite to relevant authority requiring that DFS go beyond its efforts to locate her here to satisfy NRS 128.070(1)'s due diligence requirement. *See Edwards v Emperor's Garden Rest.,* 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that this court need not consider arguments not supported by relevant authority).

grandmother that she was on her way to the hearing during the hearing.[4] Thus, the statute's purpose was satisfied and Natasha received proper notice of the termination of parental rights hearing through service by publication.[5] *See Callie*, 123 Nev. at 183, 160 P.3d at 879.

We also reject Natasha's argument that she was denied an opportunity to be heard. The hearing on the petition to terminate Natasha's parental rights went forward as scheduled, with the district court even delaying the hearing to give Natasha additional time to appear. Natasha never appeared. Thus, although she had the opportunity to be heard, she failed to avail herself of that opportunity. Given these circumstances, the district court did not violate her due-process rights.[6] *See Sw. Gas Corp. v. Pub. Utils. Comm'n of Nevada*, 138 Nev., Adv. Op. 5, 504 P.3d 503, 511-12

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[4]The record further reflects that DFS *attempted* to personally serve Natasha at her last known address. *See* NRS 432B.5902 ("[P]ersonal service must also be attempted before service of the notice is deemed to be complete[.]"). Because we ultimately conclude that the service by publication was proper, we need not address Natasha's arguments regarding NRS 14.025(1)-(2) (outlining certain informational requirements for proofs of personal service of process filed with court in civil proceedings and providing that a district court "*may*," but is not required to, find service of process as "legally insufficient" when it does not include the information required (emphasis added)).

[5]Natasha argues that the service by publication was ineffective because the district court conditioned its order allowing such service on the district attorney's office filing a diligent search affidavit, which it failed to do. We need not address this issue, as it was raised for the first time in Natasha's reply brief. *See Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (refusing to consider an argument raised for the first time in an appellant's reply brief).

[6]We decline to consider any challenge to the district court's oral denial of Natasha's motion to set aside the termination order. *See Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) ("[O]nly a written judgment has any effect . . . .").

(2022) (holding that there is no due process violation where a party does not avail itself of the opportunity to be heard); *Smith v. County of San Diego*, 109 Nev. 302, 304, 849 P.2d 286, 287 (1993) (holding that due process requirements were met where the party received notice and an opportunity to be heard before a final adjudication of the matter).

Finally, we conclude that substantial evidence in the form of exhibits and witness testimony supports the district court's findings of token efforts as a parental fault ground and that termination was in the child's best interests.[7] *See* NRS 128.105(1)(a)-(b) (providing that parental fault and the best interests of the child are required to terminate parental rights); *In re Termination of Parental Rights as to N.J.*, 116 Nev. 790, 795, 8 P.3d 126, 129 (2000) ("This court will uphold termination orders based on substantial evidence, and will not substitute its own judgment for that of the district court."). Specifically, the record reflects that the minor child was placed outside the home for over 15 consecutive months in the time leading up to the termination order, that Natasha did not provide support or consistent communication with the child, that Natasha did not engage in reunification services, that she has continued to lack stable housing and resources to care for the child, and that she has refused to address her substance abuse issues. *See* NRS 128.105(b)(6) (listing token efforts as a parental fault ground); NRS 128.109(1)(a) ("If the child has resided outside of his or her home pursuant to that placement for 14 months of any 20 consecutive months, it must be presumed that the parent or parents have demonstrated only token efforts to care for the child . . . ."). This also

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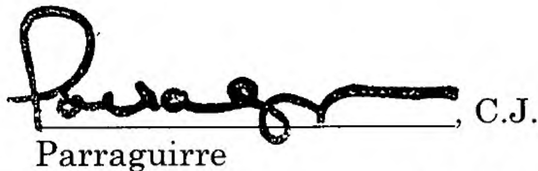
[7]Because only one ground of parental fault is required to support the termination of parental rights, *see* NRS 128.105(1)(b) (requiring a finding of at least one ground of parental fault), we need not review the district court's other findings of parental fault.

constitutes substantial evidence supporting the district court's best-interests findings, as Natasha did not rebut NRS 128.109(2)'s presumption that termination is in the child's best interests where the child was removed pursuant to NRS Chapter 432B "and has resided outside of his or her home pursuant to that placement for 14 months of any 20 consecutive months." We, therefore,

ORDER the judgment of the district court AFFIRMED.[8]



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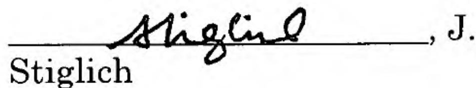

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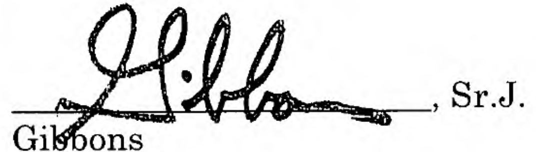

_______________, Sr.J.
Gibbons

cc: Hon. Margaret E. Pickard, District Judge, Family Court Division
The Grigsby Law Group
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Legal Aid Center of Southern Nevada, Inc.
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk

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[8]The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.