

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PARENTAL
RIGHTS AS TO A.B., MINOR.

SHEENA B.,
Appellant,
vs.
STATE OF NEVADA DEPARTMENT
OF FAMILY SERVICES; AND A.B.,
MINOR,
Respondents.

No. 84147

FILED

MAR 09 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This appeal challenges a district court order terminating parental rights. Eighth Judicial District Court, Family Court Division, Clark County; Margaret E. Pickard, Judge.¹ Appellant Sheena B. is the natural mother of respondent minor child A.B. Sheena pleaded guilty to an abuse and neglect petition and the district court later granted respondent Department of Family Service's petition to terminate Sheena's parental rights. Having carefully considered Sheena's arguments and the record on appeal, we affirm.

Sheena first asserts that ineffective assistance of counsel warrants reversal. But a party defending a petition to terminate parental rights has no absolute constitutional right to counsel and we conclude that due process did not demand the appointment of counsel in this case given that it was not complex, did not involve expert testimony, and no other evidence shows that Sheena could not represent herself. *See In re Parental Rights as to N.D.O.*, 121 Nev. 379, 382-84, 115 P.3d 223, 225-27 (2005); *see*

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

also NRS 128.100(3) (making the appointment of counsel for indigent parties discretionary). Regardless, Sheena had counsel below who zealously advocated on her behalf. This argument therefore does not provide a basis for reversal.

We also conclude that the district court's purported failure to explore guardianship as an alternative to terminating Sheena's parental rights does not warrant reversal. DFS was not seeking guardianship regarding A.B. as it had filed a petition to terminate Sheena's parental rights, and the law prefers permanent placement and termination under the facts of this case. See NRS 432B.553(1)(b), (2) (requiring DFS to make reasonable efforts to permanently place children in its custody and to seek termination when the child has been out of the home a specified amount of time). And no reversible error arises from the district court's inability to consider Sheena's initial mental health assessment because that provider failed to respond to DFS's requests. DFS conducted a second mental health assessment that was provided to the court and, because the assessment was conducted more recently than the first one, it provided a more current assessment of Sheena's mental health.

Having considered Sheena's arguments, we now turn to the termination decision. To terminate parental rights, the district court must find clear and convincing evidence that (1) at least one ground of parental fault exists, and (2) termination is in the child's best interest. NRS 128.105(1); *In re Termination of Parental Rights as to N.J.*, 116 Nev. 790, 800-01, 8 P.3d 126, 132-33 (2000). On appeal, this court reviews questions of law de novo and the district court's factual findings for substantial evidence. *In re Parental Rights as to A.L.*, 130 Nev. 914, 918, 337 P.3d 758, 761 (2014). Substantial evidence is that which "a reasonable person may

accept as adequate” to support a conclusion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

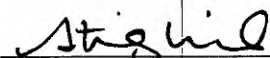
Substantial evidence supports the district court’s findings. As to parental fault, the record demonstrates that A.B. resided outside of Sheena’s home for more than 14 consecutive months, creating the presumption that Sheena only made token efforts. See NRS 128.109(1)(a) (“If the child has resided outside of his or her home . . . for 14 months of any 20 consecutive months, it must be presumed that the parent [has] demonstrated only token efforts to care for the child . . .”); NRS 128.105(1)(b)(6) (providing that token efforts is a parental fault ground). Sheena failed to rebut that presumption as the district court found her testimony not to be credible. See *in re Parental Rights as to J.D.N.*, 128 Nev. 462, 477, 283 P.3d 842, 852 (2012) (“As the family division of the district court is in a better position to weigh the credibility of witnesses, we will not substitute our judgment for that of the district court.”). Furthermore, Sheena repeatedly relapsed in her addictions and did not have adequate means to care for A.B., such that the record also supports the district court’s finding that she was an unfit parent.² See NRS 128.018 (defining an unfit parent as one who, “by reason of the parent’s fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support”); NRS 128.105(b)(3) (including “[u]nfitness of the parent” as a parental fault ground).

The record also contains substantial evidence supporting the finding that terminating Sheena’s parental rights was in A.B.’s best interest. See NRS 128.105(1) (“The primary consideration in any

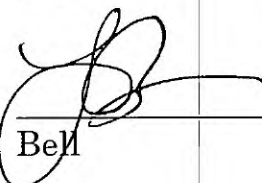
²In light of these conclusions, we need not address the other parental fault grounds found by the district court.

[termination proceeding is] whether the best interests of the child will be served by the termination.”). Sheena did not rebut the presumption that termination of her parental rights was in A.B.’s best interest as he had been out of her care for more than 14 consecutive months. See NRS 128.109(2). Substantial evidence also supports the district court’s finding that, regardless of the presumption, termination of Sheena’s parental rights was in A.B.’s best interests given that he has bonded with his foster placement and his health and behaviors have improved. See NRS 128.107 (providing considerations for the district court in determining whether to terminate parental rights when the parent does not have physical custody of the child); NRS 128.108 (outlining considerations for the district court when the child has been with a placement that is seeking to adopt the child). Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Stiglich


_____, J.
Lee


_____, J.
Bell

cc: Hon. Margaret E. Pickard, District Judge, Family Court Division
McCoy Law Group
Edward R. Bond
Lexy K. Schuman
Eighth District Court Clerk