IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL RIGHTS AS TO G.R.S., DOB: 6/12/15, A MINOR UNDER 18 YEARS OF AGE.

BRANDON S.,
Appellant,
vs.
STATE OF NEVADA, CLARK COUNTY DEPARTMENT OF FAMILY SERVICES; AND G.R.S., A MINOR,
Respondents.

No. 83605

FILED

JAN 22 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order terminating appellant's parental rights as to his minor child. Eighth Judicial District Court, Family Division, Clark County; Margaret E. Pickard, Judge.

Facts and procedural history

In July 2019, maternal grandmother of the child G.R.S. reported that appellant Brandon S. had abused G.R.S. When respondent Department of Family Services (DFS) and police officers arrived at Brandon's home, he declined to release G.R.S., and the police officers refused to assist DFS in removing the child from the home because the police officers did not observe a direct risk to the child. After DFS obtained a court order directing Brandon to relinquish G.R.S., Brandon complied. DFS then filed a protective custody petition alleging that Brandon abused

G.R.S. by pulling her by her hair across a room and was an unfit parent because he was abusing substances.[1]

During the first 16 months of the protective custody action, Brandon consistently visited G.R.S. and completed the required parenting classes. He denied any substance use outside of prescribed drugs, and when he submitted to drug tests, he generally tested positive for several prescription drugs, including those that were identified as opioids, morphine, and methadone on lab reports. Meanwhile, in July 2020, DFS moved to terminate Brandon's parental rights.

In November 2020, Brandon was arrested for a parole violation, and the record supports that he has not abused any substance since his arrest. Brandon was released to a sober living home through the drug court program on March 23, 2021. The trial on the motion to terminate his parental rights began a week and a half after Brandon's release. On the first day of the trial, Brandon admitted to having abused substances for 15 years. He testified that before his November 2020 arrest, he would take methadone, as prescribed, daily and would use heroin only when he could not get his prescription for methadone filled. Specifically, he testified that he would ingest either methadone or heroin every night after G.R.S. went to bed and right before he went to sleep because he feared going through withdrawals. He stated that by ingesting the substances and because of his high tolerance at that point, the effects of the substances generally had worn off by the morning. He referred to himself as a functioning addict

[1]The mother of G.R.S. was also a subject of the protective custody petition, and her parental rights were ultimately terminated in the challenged order. Because she did not appeal from the termination order, we do not address her parental rights.

because he never used drugs in front of people and successfully held a job as a tattoo artist. He also testified that even without his job, he had an inheritance that sufficiently covered his monthly expenses. Brandon testified that he was embarrassed and ashamed of himself, he apologized for the way he interacted with DFS before his arrest, and he stated that he "screwed up for too long and I apologize for that." Further, he stated that he wanted nothing more than to watch G.R.S. grow up.

At a status hearing four days later, the court sua sponte brought up the idea of continuing the trial to allow Brandon time to further address his substance abuse issues while out of custody. The court then decided to proceed with the second day of trial, as it was already scheduled, but indicated it would continue the remainder of the trial for 90 days to see if Brandon continued to progress positively.

Two weeks later, on the second day of the trial, Brandon testified that he was subject to random drug tests; had a curfew; attended drug court every Friday; and was participating in life skills classes, therapy, and anger management classes. He further testified that he loves G.R.S., she would want for nothing while he is alive, they have a strong and visible connection, and he wants to be there for her through the rough times and the good times. He also testified that he had offered money to the foster family, but they refused it, so he contributed some groceries when he visited.

At a status hearing roughly 90 days later, the district court reviewed a status report, which stated that Brandon had been released from the sober living home, had completed the early recovery skills course, was participating in therapy and treatment programs, and continued to test negative for drugs. In short, Brandon appeared to be showing the positive progression the court previously expressed a desire to see. However, the

domestic violence program DFS had asked Brandon to complete refused to enroll him until he had completed the drug court program, which he was not scheduled to complete until March or April 2022. DFS argued that it could not assess Brandon's progress "because he's not in a completely uncontrolled environment until he completes the drug court program" and that it was unable "to do an accurate assessment of [his] behaviors and his desires to engage in behavior change regarding his substance abuse issues until he's completed with drug court and doesn't have the threat of incarceration over him." The district court expressed concern that G.R.S. had already been out of Brandon's care for two years and Brandon could not complete services for another eight or nine months, so permanency for G.R.S. likely would not be achieved for another year. Based on those timelines, the court concluded that the termination trial must proceed, even though Brandon was sober and still successfully participating in the drug court program.

The trial resumed in August 2021 with testimony from two DFS caseworkers. The caseworker who had the case from G.R.S.'s removal until May 2021 testified that Brandon initially refused to acknowledge he had a substance abuse problem, but after his release from jail, the caseworker saw a change in him where he wanted to work with DFS to reunify with G.R.S. The current DFS caseworker testified that Brandon had completed anger management classes, was seeing a therapist, was participating in AA, NA, Moral Reconation Therapy, and group therapy through the drug court, and was doing well in drug court. The current caseworker had directed Brandon to submit to three drug tests, and they were all negative. The caseworker also testified that Brandon regularly and consistently visited G.R.S. Lastly, the caseworker testified that because the domestic violence program DFS

referred Brandon to would not enroll him until he completed the drug court program, Brandon, on his own, found a different program that would enroll him and began taking weekly classes.

Next, the foster mother, Crystal D., testified that she and her husband were willing to adopt G.R.S. but only if it was a closed adoption. She further testified that G.R.S. calls her "aunt" and Crystal's husband "uncle" but still calls Brandon "dad." Crystal also testified that before Brandon's incarceration, the only problem she had with his visitation was that Brandon would come too often. Additionally, she stated that if Brandon was under the influence during those early visitations, she was unaware because she never saw any evidence indicating Brandon was suffering from a substance abuse problem. Crystal confirmed that since Brandon's release from jail, he has visited G.R.S. weekly, is always on time, and sometimes joins them for ice cream outings after the visitation. Crystal also testified that Brandon poses no threat to G.R.S. during their visits, he is very attentive to her, and he is cooperative and helpful. She testified that he was a good dad and "Brandon's constantly there for her, answers the phone[,] . . . at the school, things of that nature." She testified that G.R.S. is bonded to Brandon, G.R.S. gets upset when her visits with Brandon are over, and G.R.S. has consistently asked why she cannot return to Brandon's home.

Lastly, Brandon testified again about his progress in the drug court program. He stated that he had been living on his own and was still under a curfew but his GPS monitor was removed by the drug court a week prior. Further, he is drug tested three times a week, and the tests have all been negative. He also stated that he was starting a four-month

professional chef program and that he volunteers to feed the homeless once a week.

During closing arguments, G.R.S.'s attorney opposed termination of Brandon's parental rights and argued "that [it is] in the best interest of [G.R.S.], that her father be given the opportunity to continue to demonstrate his efforts and desire to get his daughter back, and that his rights not be terminated." G.R.S.'s attorney argued that "Brandon for the most part, from his release of incarceration, has moved mountains by comparison to his efforts prior to him being incarcerated" and "he is a loving, supportive, involved, engaged parent with [G.R.S.]. That he's basically a changed person . . . . [H]e is making the effort. He is making the changes."

Following the trial, the district court granted the motion to terminate Brandon's parental rights. The court noted that Brandon could not be considered as a placement option until he completed the drug court program in April 2022, and while his participation in drug court signaled progress, the case had been open for 24 months and he had multiple opportunities to address his problems but had failed to do so. Thus, the court found that termination was in G.R.S.'s best interest and that four grounds of parental fault existed: (1) neglect/parental unfitness, (2) failure to adjust the circumstances that led to the removal, (3) token efforts, and (4) risk to the child's well-being if returned to Brandon's care. Brandon appeals, and while G.R.S. is named as a respondent, she joins Brandon's arguments on appeal and seeks reversal of the district court's order.

Discussion

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). "The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination." NRS 128.105(1). "Because the termination of parental rights is an exercise of awesome power that is tantamount to imposition of a civil death penalty, a district court's order terminating parental rights is subject to close scrutiny." *In re Parental Rights as to A.L.*, 130 Nev. 914, 918, 337 P.3d 758, 761 (2014) (internal quotation marks omitted). For this court to sustain an order permanently depriving a person of parental rights, the district court's factual findings must be supported by substantial evidence. *Id.*

The parental-fault findings are not supported by substantial evidence[2]

[2] The dissent notes that the briefing filed by Brandon lacks specificity regarding parental fault findings on parental unfitness and risk of injury. While the opening brief may lack the clarity and organization appropriate for appellate briefing, especially in a matter as serious as the termination of one's parental rights, the statement of the case indicates an intention to appeal all four of the parental fault findings made by the district court, and that statement is followed up with citation to legal authorities and discussions regarding Brandon's efforts. Additionally, even assuming the two grounds were not cogently argued by Brandon, termination of parental rights requires a finding of at least one ground of parental fault *and* a finding that termination is in the best interest of the child. Because we determine that the record does not contain substantial evidence supporting the district court's decision that termination was in the best interest of G.R.S., termination is still inappropriate, even if some of the district court parental fault findings were allowed to stand.

Brandon contends that the district court erred in finding clear and convincing evidence of each of the parental-fault grounds.[3] We agree.[4]

Parental unfitness

Brandon asserts that the district court erred in finding he was an unfit parent because there was not clear and convincing evidence that his substance abuse persistently prevented him from caring for G.R.S.[5] Termination of a parent's parental rights may be warranted when the parent is unfit. NRS 128.105(1)(b). An unfit parent is defined as "any

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[3]As Brandon's brief includes citations to both the record and legal authorities, and G.R.S. filed an appendix with the transcripts of the hearing and the trial, we reject DFS's assertion that this court should decline to consider Brandon's arguments on appeal.

[4]As DFS's answering brief fails to address Brandon's challenge to the district court's failure-to-adjust parental-fault finding, we conclude DFS has confessed error on this ground, and we do not further address it. *See Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (treating a respondent's failure to address an argument in their answering brief as a confession of error).

[5]Although the parties address the parental-fault grounds of neglect and parental unfitness as one, and the district court's order includes the heading "neglect/unfitness" with citation to the neglect statute, the court expressly found only that Brandon was an unfit parent. Neglect and parental unfitness are often two sides of the same coin in that "[n]eglect defines a condition of the child; unfitness describes a condition of the parent," *Champagne v. Welfare Div. of Nev., State, Dep't of Human Servs.*, 100 Nev. 640, 648, 691 P.2d 849, 855 (1984), *overruled on other grounds by In re N.J.*, 116 Nev. at 799-800, 8 P.3d at 132, but they are separate parental fault grounds. Because the district court did not specifically find that G.R.S. was a neglected child, we do not address neglect here.

Additionally, as DFS concedes that the district court's unfitness finding was based on Brandon's substance abuse alone, we need not address Brandon's arguments as to whether a single instance of physical abuse can demonstrate unfitness.

parent of a child 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 128.018. NRS 128.106 lists conditions the court may consider in determining parental unfitness and includes "[e]xcessive use of intoxicating liquors, controlled substances or dangerous drugs which renders the parent consistently unable to care for the child." NRS 128.106(1)(d).

This court has previously recognized that "it is probably true that all parents are at one time or another guilty of neglecting to give their children 'proper' care," so in order for termination to be warranted, the failure to care for the child "must be serious and persistent and be sufficiently harmful to the child." *Champagne*, 100 Nev. at 648, 691 P.2d at 855. This court further explained that "a parent does not deserve to forfeit the sacred liberty right of parenthood unless such unfitness is shown to be severe and persistent and such as to render the parent *unsuitable* to maintain the parental relationship." *Id.* (footnote omitted). Applying this principle, this court reversed the termination of a mother's parental rights where the mother was an alcoholic, but during the protective custody proceeding, she had obtained a stable job; demonstrated months of sobriety; and married a man with a stable job, with no criminal history, and who did not drink. *In re Parental Rights as to Montgomery*, 112 Nev. 719, 728, 917 P.2d 949, 956 (1996), *superseded by statute on other grounds as recognized by In re N.J.*, 116 Nev. at 798-801, 8 P.3d at 131-33. This court concluded that clear and convincing evidence did not show that the mother's alcoholism was irremediable or prevented her from adequately caring for the child, especially in light of the mother's significant progress in addressing her alcoholism. *Id.*

Under this precedent and the plain language of NRS 128.106(1)(d), a parent's substance abuse alone does not establish parental unfitness. Instead, there must be clear and convincing evidence that the parent's substance abuse consistently prevents the parent from providing the child with proper care, guidance, and support.

Turning to this case, there is no clear and convincing evidence in the record that Brandon's substance abuse was ever of such a nature that it severely and consistently prevented him from properly caring for G.R.S., not at the time of her removal nor at the time of the trial. Even if the district court only considered Brandon's conduct before DFS filed its motion to terminate Brandon's parental rights, the evidence does not clearly and convincingly demonstrate Brandon's substance abuse prevented him from properly caring for G.R.S. The evidence demonstrated that when the police accompanied DFS to Brandon's residence to remove G.R.S., the police refused to assist DFS in such an endeavor because the conditions in the home did not indicate G.R.S. was at risk. Additionally, when Brandon was still abusing substances, he maintained a job and provided food and shelter for G.R.S. Even G.R.S.'s foster mother stated that there was never any outward indication that Brandon was abusing substances even during the time when he admitted that he was doing so. Thus, the record lacks evidence demonstrating that Brandon's substance abuse consistently prevented him from properly caring for G.R.S.

When the evidence of Brandon's efforts to maintain his sobriety following his arrest is added to the picture, there is even less support for the district court's finding of unfitness based on substance abuse. Significant evidence demonstrated that Brandon had been sober for almost a year by the end of the termination trial, successfully participating in a treatment

program and making the types of changes DFS sought in the case plan it developed for reunification. Thus, even if there had been evidence that Brandon's substance abuse consistently prevented him from providing G.R.S. with proper care before his sobriety, the record demonstrates that Brandon had made significant progress since his arrest and had maintained his sobriety.

Further, it was improper for DFS to use Brandon's enrollment in the drug court program as both a shield and a sword. According to DFS, Brandon's fitness could not be properly assessed while he was still enrolled in the drug court program even though Brandon continued to successfully participate in the program, but the time it would take Brandon to complete the drug court program necessitated the termination of his parental rights to ensure the child's stability. Moreover, it is unclear from the evidence in the record why DFS did not start reunification efforts earlier, at least once Brandon was successfully participating in the drug court program. There is no evidence that Brandon could not care for G.R.S. at that time such that DFS could not take steps toward reunification. We are concerned that DFS's reliance on Brandon's completion of the drug court program resulted in a paradoxical situation where G.R.S.'s time out of Brandon's care supported termination because the drug court program's requirements prevented Brandon from completing the program before the end of the trial, but that such support was inconsistent with the necessary consideration of Brandon's actual progress toward completing his case plan. In sum, substantial evidence does not support the district court's parental-fault finding of unfitness, as DFS did not show with clear and convincing evidence that Brandon's substance abuse prevented him from consistently providing G.R.S. with proper care, guidance, and support.

Token efforts

Brandon next argues that the district court erred when it concluded that he did not overcome the presumption that he had only made token efforts to care for G.R.S.[6] We agree.

Termination of parental rights may be warranted when a parent makes only token efforts "(I) [t]o support or communicate with the child; (II) [t]o prevent neglect of the child; (III) [t]o avoid being an unfit parent; or (IV) [t]o eliminate the risk of serious physical, mental or emotional injury to the child." NRS 128.105(1)(b)(6). If a child has resided outside of the child's home for 14 of any 20 consecutive months, "it must be presumed that the parent or parents have demonstrated only token efforts to care for the child" as set forth in NRS 128.105(1)(b)(6). NRS 128.109(1)(a). A parent may rebut that presumption by proving otherwise by a preponderance of the evidence, which requires evidence that "lead[s] the fact-finder to conclude that the existence of the contested fact is more probable than its nonexistence." *In re Parental Rights as to M.F.*, 132 Nev. 209, 217, 371 P.3d 995, 1001 (2016) (internal quotation marks omitted).

Here, the district court properly applied the presumption that Brandon had only made token efforts to care for G.R.S. because G.R.S. had been out of Brandon's care for more than 14 consecutive months. But we conclude that substantial evidence does not support the district court's conclusion that Brandon failed to overcome that presumption. To the extent

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[6]Brandon also argues that the token-efforts presumption was erroneously applied, as he was limited in his ability to engage in services recommended by DFS because of the COVID-19 pandemic. Because the record demonstrates that only the parenting classes Brandon was required to take were limited, and he was nonetheless able to complete them, we are not persuaded by Brandon's argument in this regard.

that the district court based its conclusion solely on Brandon's efforts preceding the motion to terminate his parental rights, it erred because the presumption did not yet apply, given that G.R.S. had only been out of Brandon's care for 12 months at that time. In fact, DFS requested in its motion that the court consider whether the presumption would be applicable at the time of the trial. Although Brandon's refusal to acknowledge or address his substance abuse and his shortcomings in fully complying with his case plan before the termination motion was filed may support a token-efforts finding, the evidence demonstrates that Brandon's efforts following his incarceration have been significantly more than token. Brandon fully complied with the requirements placed on him by DFS, including finding his own domestic violence class, drug testing clean three times weekly, and consistently visiting and engaging appropriately with G.R.S. Additionally, if the district court was concerned with Brandon's efforts to provide financial support for G.R.S., his testimony regarding his employment, income, offers to provide financial support to the foster family, and contributions of groceries was not rebutted. As discussed above, the fact that Brandon still had a few more months in the drug court program does not preclude the court from assessing his efforts or deferring such an assessment through the date when Brandon was expected to complete the program. When a parent is successfully working through a substance abuse treatment program, but the length of the program prevents the parent from immediately reunifying with the child, the court cannot conclude that the amount of time left in the treatment program demonstrates the parent is only making token efforts to care for the child. Therefore, we conclude that the record does not contain substantial evidence supporting the district

court's finding that Brandon failed to rebut the token-efforts presumption by a preponderance of the evidence.

Risk of serious injury

Parental fault may be established when there is a "[r]isk of serious physical, mental or emotional injury to the child if the child were returned to, or remains in, the home of his or her parent or parents." NRS 128.105(1)(b)(5). The district court found that, if returned to Brandon's care, G.R.S. would be exposed "to parental drug use and potentially to domestic violence" and that because Brandon has "not made substantial efforts to address [his] substance abuse outside of a controlled environment, [G.R.S.'s return to his care] poses an unacceptable risk of additional physical, mental, or emotional injury to the child[ ]."

The record does not support the district court's finding that returning G.R.S. to Brandon's care would result in G.R.S.'s exposure to parental drug use, as Brandon had been sober since November 2020. Further, it is inappropriate to use Brandon's successful participation in the drug court program as a sword against him in asserting that because the drug court program is a controlled environment, he failed to demonstrate a change in his habits, such that he no longer poses a risk to G.R.S. Additionally, there was no evidence in the record, even including Brandon's conduct prior to the motion to terminate, that showed he posed a risk of *serious* injury to G.R.S. Accordingly, we conclude that substantial evidence does not support the district court's finding that DFS proved by clear and convincing evidence that returning G.R.S. to Brandon's care posed a risk of serious injury to G.R.S. Thus, none of the district court's parental fault findings are supported by substantial evidence. NRS 128.105(1); *In re*

Termination of Parental Rights as to N.J., 116 Nev. at 800-01, 8 P.3d at 132-33.

The best interest finding is not supported by substantial evidence

Lastly, Brandon argues that the district court erred in finding that DFS demonstrated by clear and convincing evidence that termination of his parental rights was in G.R.S.'s best interest.[7] We agree.

"The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination." NRS 128.105(1). Of particular relevance here, NRS 128.108 identifies factors that the court must consider when a child in DFS's protective custody has been placed with a foster family and DFS is seeking termination of parental rights with the intention of having the foster family adopt the child. The factors the court is required to consider are meant to inform the court on "whether the child has become integrated into the foster family to the extent that the child's familial identity is with that family, and whether the foster family is able and willing permanently to treat the child as a member of the family." NRS 128.108 (listing eight specific factors that the court must consider when the child resides in foster care).

Here, the district court quoted NRS 128.108 in its order, but it did not address each of the statutory considerations in relation to this case. In fact, the district court devoted only 2.5 pages of its 49-page order to what

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[7]While G.R.S. argues that the district court erred by not considering her capacity to express her preferences, as required by NRS 128.107(2), we need not address this argument, as none of the parties objected to the court's failure to evaluate G.R.S.'s capacity. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

Nevada law says is the "primary consideration in any proceeding to terminate parental rights"—the best interest of the child. NRS 128.105(1). The evidence in the record does not demonstrate that G.R.S.'s familial identity is with the foster family. G.R.S. refers to the foster mom as "aunt" and the foster dad as "uncle." G.R.S. continues to refer to Brandon as "dad." And G.R.S. is regularly upset when her visits with Brandon conclude and has consistently requested to return to Brandon's care. Additionally, while the district court noted in its order that G.R.S. had not, at the time the order was entered, lived with either parent for over 24 months, as we discussed in our analysis of parental unfitness, it is unclear from the record why DFS did not start reunification efforts earlier as there was no evidence that Brandon could not care for G.R.S. at least at the time he began successfully participating in drug court if not earlier. Moreover, as we discussed in our analysis of token efforts, although G.R.S. had been out of Brandon's care for more than 14 consecutive months at the time of the termination trial, Brandon overcame the presumption that he had only provided token efforts. Considering the lack of other evidence regarding G.R.S.'s best interest, we conclude substantial evidence in the record does not support the district court's finding that termination of Brandon's parental rights was in G.R.S.'s best interest.

Thus, we conclude that substantial evidence does not support the district court's findings of parental fault or that the termination of Brandon's parental rights was in G.R.S.'s best interest.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Stiglich

_____, J.
Pickering

_____, J.
Herndon

_____, J.
Lee

_____, J.
Parraguirre

_____, J.
Bell

CADISH, C.J., dissenting,

On the briefing of the parties and the record before this court, I would affirm the district court's order terminating Brandon's parental rights, and I therefore dissent. In order to terminate parental rights, the district court must find clear and convincing evidence that at least one ground of parental fault exists and termination is in the child's best interest. NRS 128.105(1). Here, while the majority states that DFS's answering brief does not address Brandon's challenge to the district court's finding of parental fault as a result of his failure of parental adjustment under NRS 128.105(1)(b)(4), and thus finds DFS confessed error as to this finding, a review of Brandon's opening brief reveals that he made no cogent argument for reversal of this finding to which DFS needed to respond. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider arguments that are not cogently argued). He simply quotes a case and the statute defining failure of parental adjustment but makes no argument whatsoever as to how that law applies to the facts of this case or how the circumstances here do not meet that standard. Accordingly, we must affirm the district court's finding of this ground of parental fault.

Moreover, nowhere in Brandon's opening brief did he address the district court's finding of parental fault by virtue of "[r]isk of serious physical, mental or emotional injury to the child if the child were returned to . . . the home of his or her parent." NRS 128.105(1)(b)(5). Having failed to address this ground of parental fault in his appeal, he has waived the right to do so, and with only one ground of parental fault being required, he has essentially confessed that at least one such ground exists. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3

(2011) ("Issues not raised in an appellant's opening brief are deemed waived."); *see also* NRS 128.105(1)(b) (requiring only one ground of parental fault to terminate a parent's parental rights).

As to the best interests of the child, pursuant to NRS 128.109(2), there is a presumption that the best interest of the child will be served by the termination of parental rights where the child has been placed outside of her home for 14 of 20 consecutive months. Here, it is undisputed that G.R.S. was out of the home for over two years, which is more than enough time to give rise to this presumption. While G.R.S.'s reference to the foster parents as aunt and uncle and Brandon as dad as well as her preference to return to Brandon's care lend some support to the idea that her familial identity is not with the foster family, which is one consideration under NRS 128.108, this is not sufficient to overcome the presumption here, and there is substantial evidence in the record to support the district court's finding that termination was in G.R.S.'s best interest in light of the presumption.

Accordingly, the district court's findings of both parental fault and best interest of the child are supported by substantial evidence, and this court should affirm. For these reasons, I dissent.

_____, C.J.
Cadish

cc: Hon. Margaret E. Pickard, District Judge, Family Division
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