

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: R.C., A MINOR.

No. 85945

TIFFANY M.,  
Appellant,  
vs.  
GARRETT C.,  
Respondent.

FILED

OCT 12 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for termination of parental rights. Eighth Judicial District Court, Family Division, Clark County; Nadin Cutter, Judge.<sup>1</sup>

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).

We conclude that substantial evidence does not support the district court's finding that appellant Tiffany M. failed to provide clear and convincing evidence of respondent Garrett C.'s unfitness to parent the

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

minor child, R.C.<sup>2</sup> See NRS 128.105(1)(b)(3) (providing that a parent's unfitness is a parental fault ground). An unfit parent is defined as "any 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. For termination to be warranted based on unfitness, the failure to care for the child "must be serious and persistent and be sufficiently harmful to the child." *Champagne v. Welfare Div. of Nevada State Dep't of Hum. Res.*, 100 Nev. 640, 648, 691 P.2d 849, 855 (1984). NRS 128.106 provides a non-exhaustive list of conditions that "may diminish suitability as a parent" which the district court must then consider in determining unfitness.

Here, testimonial and documentary evidence reflect that Garrett has felony convictions for distribution and possession of child pornography, for which Garrett was sentenced to ten years in prison. Based on the convictions, Garrett is barred from being around minors, including R.C., without prior authorization from his parole officer for 25 years following his anticipated release date in December 2023. According to testimonial evidence deemed credible by the district court, after Garrett's arrest, Tiffany had discovered pornographic images of a 13-year-old female child known to the parties on Garrett's computer. Garrett conceded to having possessed multiple images of child pornography on his computer,

---

<sup>2</sup>The district court's order states that Tiffany failed to demonstrate "beyond a reasonable doubt" that Garrett is unfit, but ultimately found that Tiffany failed to demonstrate the parental fault ground of unfitness by clear and convincing evidence. To the extent the district court found that Tiffany was required to prove unfitness beyond a reasonable doubt, it erred, but we need not further address this issue because we conclude that the record reflects that Tiffany demonstrated this parental fault ground by clear and convincing evidence.

and that he had not been able to overcome his urges to view such images. He testified to being “obsessed.” Garrett’s conviction and the surrounding circumstances thus indicate Garrett’s unfitness. *See* NRS 128.106(1)(f) (including as a relevant condition bearing on parental fitness the “[c]onviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child’s physical, mental or emotional health and development”).

Additional evidence adduced at trial also reflects Garrett’s unfitness. Testimony that the district court deemed credible establishes that before his arrest, Garrett placed a small camera on a bedroom dresser to record a video of Tiffany’s adolescent female cousin undressing. Tiffany’s cousin was 12 or 13 years old at the time of the recording and was a frequent visitor to Tiffany and Garrett’s home. Garrett conceded that he saved this video on his computer and that he did not delete it. Garrett also conceded that he told Tiffany’s father that he was sexually attracted to Tiffany’s cousin. As of Garrett’s anticipated release date, R.C. will be around the same age that Tiffany’s cousin and the other child were when Garrett surreptitiously obtained their video and images.

Testimonial evidence also reflects that Garrett has demonstrated sexual interest in R.C. In testimony that the district court found credible, Tiffany recounted that she saw Garrett on various occasions turning to look at R.C. during intercourse with Tiffany when R.C. was around two years old, and that on one such occasion, Garrett reached out to touch R.C. Tiffany further testified that after R.C. started sleeping by herself in a separate room, Garrett would not go into the couple’s shared bedroom until between 3 a.m. and 6 a.m., and that this went on for several

weeks, including the week of his arrest. She testified that she could not account for what Garrett may have been doing with R.C. during those hours. This is consistent with Tiffany's father's testimony, which the district court also deemed credible, that Garrett confided in him that Garrett was sexually attracted to R.C., and that he had had sexual thoughts of the children while having intercourse with Tiffany.

Finally, a letter from a licensed psychologist to the sentencing judge in Garrett's child pornography case noted that with many types of sexual offenders, "an extended period of incarceration has the likelihood of exacerbating the factors that led to their sexual offending rather than ameliorating them." The record supports the district court's findings that the letter did not claim that Garrett was no longer sexually attracted to minor children, as he claimed at the termination trial, and that Garrett had not received sex offender related counseling since May 2014. That failure to undergo sex offender treatment further indicates Garrett's unfitness. See *In re Int. of Kenna S.*, 766 N.W.2d 424, 433 (Neb. 2009) (holding that "termination of parental rights may be based on a parent's failure to undergo meaningful therapy"); *State ex rel. Dep't of Hum. Servs. v. Keeton*, 135 P.3d 378, 385 (Or. 2006) (holding that "a parent's condition as an untreated sex offender can be, and generally is, a condition that is seriously detrimental to that parent's children").

Although Garrett's possession and distribution of child pornography may be insufficient on its own to support termination of Garrett's parental rights, the record includes additional evidence supporting termination that the district court deemed credible. Considering the convictions along with Garrett's own testimony that he could not control his compulsions, his lack of any meaningful treatment in



the past ten years, and the credible testimony concerning his sexual attraction to R.C., we conclude that Tiffany demonstrated by clear and convincing evidence that Garrett's conduct is "serious and persistent" and "sufficiently harmful" to R.C., such that Garrett is unsuitable to maintain the parental relationship with R.C.<sup>3</sup> See *Champagne v. Welfare Div. of Nevada State Dep't of Hum. Res.*, 100 Nev. 640, 648, 691 P.2d 849, 855 (1984) (further defining "unsuitable"), *overruled on other grounds by In re Termination of Parental Rights as to N.J.*, 116 Nev. 790, 8 P.3d 126 (2000).

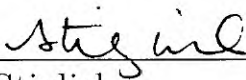
We further conclude that substantial evidence supports the district court's finding that it would be in R.C.'s best interest to terminate Garrett's parental rights. See NRS 128.105(1)(a) (providing that the primary consideration for determining whether termination of parental rights is warranted is the best interests of the child). The record reflects that R.C. is "an untroubled, well-adjusted, happy child." R.C. is currently in middle school with a 4.0 GPA and is involved in various extracurricular activities. See NRS 128.005(2)(c) ("The continuing needs of a child for proper physical, mental and emotional growth and development are the decisive considerations in proceedings for termination of parental rights."). R.C. currently lives with Tiffany and Tiffany's fiancé, and their two children, R.C.'s half-siblings. Tiffany's fiancé has been R.C.'s parental figure for eight years, and the record supports the district court's finding that R.C. wants Tiffany's fiancé to adopt her, a feeling reciprocated by Tiffany's fiancé. Substantial evidence also supports the district court's


---

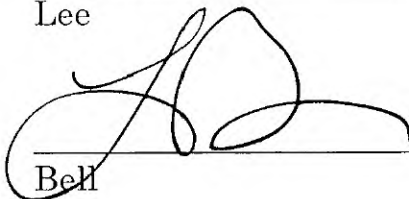
<sup>3</sup>We need not address the remaining alleged parental fault grounds because one ground of parental fault is sufficient to support the termination of parental rights. See NRS 128.105(1)(b) (requiring a finding of at least one ground of parental fault).

finding that Garrett has not had contact with R.C. since she was two years old, and that Garrett "is a stranger to [R.C.], and she is satisfied that he continue to be a stranger to her." Because substantial evidence supports its finding that termination of Garrett's parental rights is in R.C.'s best interest but does not support its finding that Tiffany failed to prove a parental fault ground by clear and convincing evidence, we conclude that the district court erred by denying Tiffany's petition to terminate Garrett's parental rights. We therefore

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

  
\_\_\_\_\_, C.J.  
Stiglich

  
\_\_\_\_\_, J.  
Lee

  
\_\_\_\_\_, J.  
Bell

cc: Hon. Nadin Cutter, District Judge, Family Division  
Ghandi Deeter Blackham  
Valarie I. Fujii & Associates  
Eighth District Court Clerk