

SUPREME COURT OF NEVADA

In the Matter of the Parental Rights as to K.D.L. and S.P.K.; Richard J.K., a/k/a Richard Jay K. v. The State of Nevada, Division of Child and Family Services, Department of Human Resources

58 P.3d 181 (Nev. 2002) · No. No. 38816 · Decided December 3, 2002

SUMMARY

The Supreme Court of Nevada affirmed the termination of Richard J.K.'s parental rights as to K.D.L. and S.P.K. The court held that clear and convincing evidence supported the children's best interests and parental fault based on domestic-violence convictions, parental unfitness, and failure of parental adjustment, and that incarceration was not the sole basis for termination.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam; Shearing; Leavitt; Becker
JURISDICTION	Nevada
DECIDED	December 3, 2002
DOCKET	No. 38816
DISPOSITION	affirmed
PROCEDURAL POSTURE	Richard appealed the district court's judgment terminating his parental rights to K.D.L. and S.P.K.
STANDARD OF REVIEW	The Nevada Supreme Court upheld termination-of-parental-rights determinations based on substantial evidence. The statutory best-interests and parental-fault elements had to be proven by clear and convincing evidence.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential
PARTIES	Richard J.K., a/k/a Richard Jay K. v. The State of Nevada, Division of Child and Family Services, Department of Human Resources

TOPICS

- termination of parental rights
- parental rights
- domestic violence
- family law procedure
- appellate procedure

PRACTICE AREAS

family law

termination of parental rights

domestic violence

appellate procedure

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that termination of Richard's parental rights served the children's best interests.
2. Whether clear and convincing evidence established parental fault through parental unfitness and failure of parental adjustment.
3. Whether Richard's incarceration was improperly treated as the sole basis for termination of his parental rights.

HOLDINGS

1. The district court properly found by clear and convincing evidence that termination of Richard's parental rights served K.D.L.'s and S.P.K.'s best interests, and Richard failed to rebut the statutory presumption favoring termination after the children had spent fourteen months of a twenty-month period outside the home.
2. Clear and convincing evidence supported the district court's finding that Richard was an unfit parent under NRS 128.106(6).
3. The district court properly found by clear and convincing evidence that Richard failed to adjust as a parent.
4. Incarceration alone cannot support termination of parental rights, but termination was proper here because the district court relied on Richard's violent criminal conduct, failure to change, and the danger he posed to the children in addition to his incarceration.

KEY QUOTATIONS

“Taken together, NRS 128.109(2) and NRS 432B.553(2) express the general public policy to seek permanent placement for children rather than have them remain in foster care.” (186)

“The period of Richard's incarceration was not the sole factor supporting the district court's decision. Rather, it is the nature of his offenses and the potential danger he presents to his children that is relevant.” (188)

FACTUAL BACKGROUND

Richard and Mary were the unmarried parents of K.D.L. and S.P.K. In 1998, Mary suffered severe injuries in a domestic-violence incident involving Richard, which led to the children's removal; investigations also revealed substance abuse, prior domestic-violence and substance-related offenses, and Richard's positive tests for cocaine and marijuana. Although the children were temporarily returned after partial compliance with a reunification plan, Richard committed another act of domestic violence involving his mother, violated probation, and received a lengthy prison sentence. The children were ultimately placed in foster care for nineteen consecutive months, became integrated into a foster family that wished to adopt them together, and the district court terminated Richard's parental rights.

PROCEDURAL HISTORY

The children were repeatedly removed from their parents' care and placed in foster care. After DCFS filed a petition to terminate parental rights, the district court conducted a hearing and entered a written order terminating Mary's and Richard's parental rights based on parental unfitness, failure of parental adjustment, and the children's best interests. Richard appealed to the Nevada Supreme Court.

DISPOSITION

affirmed

CASES CITED

- Matter of Parental Rights as to Q.L.R., 118 Nev. ___, 54 P.3d 56 (2002)
- Matter of Parental Rights as to J.L.N., 118 Nev. ___, 55 P.3d 955 (2002)
- Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000)
- Smith v. Smith, 102 Nev. 263, 720 P.2d 1219 (1986)
- Drury v. Lang, 105 Nev. 430, 776 P.2d 843 (1989)
- Kobinski v. State, 103 Nev. 293, 738 P.2d 895 (1987)
- Matter of Parental Rights as to C.J.M., 118 Nev. ___, 58 P.3d 188 (2002)
- Champagne v. Welfare Division, 100 Nev. 640, 691 P.2d 849 (1984)
- Matter of Parental Rights of Montgomery, 112 Nev. 719, 917 P.2d 949 (1996)