IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS FAZ, JR, Appellant, vs. WASHOE COUNTY DEPT OF SOCIAL SERVICES, Respondent.	)	Case No. 67063

Appeal from Order Terminating Parental Rights from the
Family Division of the Second Judicial District Court of the State of Nevada
The Honorable Deborah Schumacher

APPELLANT'S OPENING BRIEF

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APPELLANT'S OPENING BRIEF

I. JURISDICTIONAL STATEMENT

This appeal is from a final order terminating the parental rights of Jesus Faz, Jr. (hereinafter "Mr. Faz'). Appendix, Volume IV pages 618-629 (A, V1V, 618-629).[1] The Order Terminating Parental Rights was filed in the Second Judicial District of Washoe County, Nevada ("Court") on September 24, 2014. Id.[2] A Notice of Entry of Order was filed September 24, 2014. A, VIV, 630-643.

Nevada Rules of Appellate Procedure (NRAP), Rule 3A(b)(1), allows an appeal to be taken on final judgment. Additionally, NRAP 4(a)(1) provides that "a notice of appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served."

The Notice of Entry of Order was served via electronic filing on September 24, 2014. A, VIV, 630-643. Appellant, Mr. Faz, filed a Notice of Appeal by the 30 day deadline on October 16, 2014. A, VIV, 644-647.

II. STATEMENT OF THE ISSUES ON APPEAL

1. The District Court erred by denying Mr. Faz's right to a trial by jury as proposed in the Nevada State Constitution.
2. The District Court erred in finding that it was in the best interests of Maria, Michael and Nathaniel to terminate Mr. Faz's parental rights by clear and convincing evidence.

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[1] The Appendices will be referenced at A for the Joint Appendix, V for Volume, I,II, III, or IV for which Volume referenced and the page numbers on which the assertions can be found in the record. Thus a full reference such as Joint Appendix, Volume four, pages 618-619 is shortened to A, VIV, 618-629.

[2] Id. Will be used when referring to the same document that was just previously cited

3. The District Court erred in finding that there was parental fault on behalf of Mr. Faz sufficient enough to satisfy the high burden of clear and convincing evidence.

III. STATEMENT OF THE CASE

On July 6, 2011, Washoe County Department of Social Services ("WCDSS") filed a petition to terminate the parental rights of Jesus Faz, Jr. A, VI, 39-48. On October 3, 2013 WCDSS amended the original petition removing three children from the original petition. A, VI, 85-93. Mr. Michael Roth, attorney for Mr. Faz filed a Demand for Jury Trial on July 3, 2014. A, VI, 99-102. The District Court denied this demand on July 24, 2014. A, VI, 107-109. Trial began in earnest on August 11, 2014 and concluded on August 14, 2014. A, V1V, 618-629. The Order Terminating Parental Rights was filed in the Second Judicial District of Washoe County, Nevada ("Court") on September 24, 2014. Id. A Notice of Entry of Order was filed September 24, 2014. A, VIV, 630-643. Appellant, Mr. Faz, filed a Notice of Appeal by the 30 day deadline on October 16, 2014. A, VIV, 644-647.

IV. STATEMENT OF PERTINENT FACTS TOTHIS APPEAL

Six of Mr. Faz's children, Jesus (hereinafter called "JC"), Angel, Logan, Maria, Michael and Nathaniel were removed from parental care on January 13, 2010 based upon Mrs. Faz being under the influence of methamphetamine and marijuana during a court hearing in Sparks Justice Court. That same date, Washoe County Department of Social Services ("WCDSS") testified that they inspected the home of Mr. Faz and found it to be cluttered and dirty to the degree that it posed health and safety hazards for the children. A, VII, 136-160. Additionally, WCDSS found that the rent had not been paid, the family was facing eviction and the power had been shut off. Id. As a result of Mrs. Faz's incarceration, the conditions of the

home, Mr. Faz's work schedule, and his inability to properly watch all of the children, WCDSS's concluded that it had no alternative but to remove the children. Id. WCDSS also had secondary concerns over the idea that Mr. Faz had knowledge of Mrs. Faz's drug use, but still allowed her to be the main caretaker of the children. Id.

Prior to their removal, the children had lived with their parents in the same home since 2005 and attended the same schools, Head Start and Robert Mitchell Elementary. WCDSS testified that at the time of removal the children were healthy and there were supplies and food within the home sufficient enough to feed all six children. Id. At the time of removal, Maria Faz was already in therapy since November, 2009 based upon alleged acts of molestation from her brother, JC. Id.

Mr. Faz entered into a case plan on February 22, 2010. A, VI, 31-34. The case plan goals at that time were that Mr. Faz maintain or obtain legal employment; maintain or obtain safe and appropriate housing; reinstate Medicaid and food stamps upon reunification as needed; maintain a clean and safe home; attend the "Effects of Violence in the Home" class; and participate in parenting classes at Children's Cabinet. Id.

During the termination of parental rights trial, WCDSS stated that Mr. Faz had completed his Effects of Violence in the Home class. A, VII, 160-192. Additionally Ms. Erickson-Ramsey reported that Mr. Faz stayed in constant contact with WCDSS while she was on the case, which was for approximately 15 months from January of 2010 until April of 2011. Id. Ms. Erikson-Ramsey stated that Mr. Faz was always very consistent in his visitation with all six children. Id. At the 15 month reporting period and permanency hearing, Ms. Erickson-Ramsey recommended that a plan of termination of parental rights be applied to Mr. Faz's

case for all six children based mainly on the fact that Mr. Faz did not have stable housing and that he was not properly addressing the children's special needs at the time. Id.

On or around the month of May 2011 the case transferred to Jacinta Palmer. Jacinta testified that between the 15 month permanency hearing and the 24 month permanency hearing that Mr. Faz was living in a hotel room that she went and inspected and found it to be clean. A, VII, 228-277. When asked whether she thought that this hotel room would be appropriate for all six children, she testified that it would be "challenging" but did not state it was unsuitable. Id. Mrs. Palmer testified that at the 24 month reporting period, Mr. Faz was struggling with understanding the many special needs of the children, being able to provide adequate supervision for all six children, and that his housing was unsuitable. Id. This assessment did not lead her to recommend changing the permanency plan of termination of parental rights to reunification. Id. She also testified that Mr. Faz admitted that some of the children had issues with sexual abuse and further testified that he wanted to talk to JC about his interactions with women and how he should act generally with females based on the revelations of JC's alleged abuse. Id.

Ms. Palmer testified that Mr. Faz was very involved in the "child and family team meetings" that were being held monthly. Id. She testified that Mr. Faz was engaged and asked questions of the providers. Id. Ms. Palmer testified that in April or May of 2013, Mr. Faz had procured a two bedroom apartment and that she had been out to see it just prior to the end of her involvement on his case. Id. She indicated that all of Mr. Faz's hotel rooms and his apartment were all well furnished with adequate supplies and were appropriate and clean. Id. Ms. Palmer indicated that Mr. Faz's criminal history was seen as a barrier to his ability to

move into a bigger apartment but that this barrier had been recently lifted based on that criminal charge being dropped from a felony. Id.

At the 33 month mark, Maria, Michael and Nathaniel all are moved into the family foster home of Tamara Greenman-Reid. A, VII, 193-228. Ms. Greenman-Reid is a treatment foster parent for Koinonia who was specifically trained for traumatized children. Id. Ms. Greenman-Reid testified that all three children attend therapy once a week with a Koinonia therapist and all three see Dr. McKay who is a psychiatrist with Koinonia as well. Id. In addition to those services Michael and Nathaniel were involved in occupational therapy, Michael had additional speech therapy and Maria had been attending language therapy, but had recently graduated from that. Id. Ms. Greenman-Reid stated that all three children required "line-of-sight supervision." Id. Ms. Greenman-Reid did admit that she herself is unable to provide line-of-sight supervision for the children 24/7. Id. Ms. Greenman-Reid testified that all three children look forward to their visits with their dad up to the time of the trial. Id.

In May of 2013 WCDSS appointed the third social worker to work with Mr. Faz and Maria, Michael and Nathaniel named Julia Bauer. A, VII, 277-313 & VIII, 314-330. It was at this point in time that the three youngest children were given a separate social worker than the eldest three. This was done, in part, because WCDSS had determined that it would be in the best interest of the children if different permanency plans were explored based upon the individual needs of the children. Id. Ms. Bauer stated that the primary barrier for reunification was Mr. Faz's "ability to parent these children." Id. Although Ms. Bauer was able to articulate in the hearing the barriers for reunification, she also testified that she didn't discuss these barriers with Mr. Faz during any of the child

and family team meetings that were held monthly with Mr. Faz. Id. She testified that she never even went to Mr. Faz's apartment for the year she had the case. Id.

Ms. Bauer felt that termination of Mr. Faz's parental rights were appropriate based upon her concerns that Mr. Faz didn't have a safe enough residence, (even though she testified to not seeing it); that the children lacked the proper supervision; and that she had concerns that Mr. Faz would be unable to meet the basic needs of all six children (even though he had assimilated to the three oldest children being placed with him); and the fact that the children had been in foster care for over three years. Id. When asked whether or not WCDSS had offered a supervision plan to Mr. Faz, Ms. Bauer answered by saying "Mr. Faz never offered a plan for supervision" without disclosing whether or not WCDSS had. Id. Ms. Bauer testified that a permanent placement for these three children with a prospective adoptive family had failed recently after the children had been placed there for only 2 weeks. Id.

Ms. Bauer testified that Mr. Faz had complied with "some of the tasks" contained in the case plan, such as consistent visitation, consistent employment, attending the children's medical, clinical and dental appointments, staying in good contact with WCDSS, and that he was never accused of being under the influence of drugs or alcohol. Id. Ms. Bauer states that the "token efforts" she believes that Mr. Faz has exhibited are his limited ability to parent and properly supervise his children. Id. She qualifies this by stating that she doesn't believe that Mr. Faz can parent these children based upon the children's psychological issues and "where their need for supervision comes from." Id. She also states that she did not believe that Mr. Faz's financial situation was a primary issue in returning the children to Mr. Faz. Id.

Lindsey Maurins testified that one of the top 5 needs of all three of the children would be continuing contact with their siblings who are currently placed with their father, Mr. Faz. A, VIII, 401-448. Ms. Maurins also stated that the top five needs for these children were as follows: a family that is a strong advocate for them educationally and be able to work with the school on their individualized education plans as well as implement strategies that are recommended for the kids at home and school; parents that are predictable, structured and have routine and consistency at home; parents that are nurturing and affectionate with experience in emotional trauma; parents that are willing to participate in ongoing therapeutic and psychiatric services for the children. Id. Ms. Maurins testified that another failed adoption would be detrimental to the children and have a drastic effect on them. Id.

Mickey Franklin testified that over 100 people inquired about these children but that only a few of them, at the time of trial, were able to meet their needs. A, VIII, 448-471. (Ms. Maurins testified a second time after Ms. Franklin to state that out of the over 100 prospective placements, only one had looked promising, and eventually even that family was ruled out based upon a lack of experience. A, VIII, 471-480) Ms. Franklin testified that she believed that these children were highly adoptable based upon age and the lack of a reactive detachment disorder, not knowing that one of the children actually had a diagnosis of reactive detachment disorder. A, VIII, 448-471. This new information did not seem to change her mind. Id.

Mr. Faz testified last and stated that he works as a taxi driver for the last 22 years and has lived in a two bedroom apartment for the last 16 consecutive months. A, VIV, 506-588. He further stated that currently he has the children's grandmother, Delores Johnson, to help supervise the children while he is at work

as well as his adult daughter, Sara. Id. Mr. Faz indicated that he would be able to supervise all six children based on the help he would receive from Delores and Sara and that he understood that line-of-sight supervision was needed for all six children. Id. Mr. Faz articulated a plan for more financial assistance through housing and temporary assistance for needy families (TANF). Id. Mr. Faz testified that now that he has a rental history, he will be able to apply for and achieve better housing for all six children should they be placed with him. Id.

V. SUMMARY OF THE ARGUMENT

In January of 2010, Maria, Nathaniel and Michael were removed from Mr. Faz's care due to allegations of neglect that stemmed from a dirty home and the inability of the parents to properly provide for their children. A, VI, 2-6. The District Court substantiated the finding after the continued adjudicatory/dispositional hearing in March of 2010. A, VI, 12-15. In September of 2014, over 4 years after the initial removal of the children, the District Court granted the petitioner's petition to terminate Mr. Faz's parental rights as to Maria, Nathaniel and Michael. A, V1V, 618-629.

The District Court denied Mr. Faz's demand for a jury trial. A, VI, 107-109. This denial was a short two page order made based on the reasoning that there was not a specific legislative grant that would recognize the right to a trial by jury based on that right not being a right during the conception of the Nevada constitution. Id. This was an erroneous decision based upon only assumed case law (as none was cited in the order) that does not directly correlate to termination of parental rights cases and thus should not be followed or allowed.

The District Court found that parental rights should be terminated based upon the grounds of token efforts, failure of parental adjustment, unfitness, and that it was in the best interests of the children that Mr. Faz's rights be terminated. A,

V1V, 618-629. The determination of best interests was made solely on the basis of the statutory presumptions which the District Court did not believe that Mr. Faz rebutted. Id.

The trial showed a substantial amount of evidence that Mr. Faz had rebutted the presumptions and completed a substantial part of his case plan as written. The District Court, in its decision made no mention of the burden of proof needed for Mr. Faz to rebut the presumptions as they applied to him, but simply found that he had not rebutted the presumptions. Mr. Faz testified at trial that he had been employed for the life of the case, had moved into an apartment and had maintained a residence there for the last 16 months, understood the supervision and medical needs of his children, and indicated a plan to further accommodate Maria, Nathaniel and Michael should they be returned to him. The evidence showed that he currently cares for three special needs children, including one that is blind. The testimony not only showed that Mr. Faz was maintaining his children in home, but that they were thriving.

The District Court in its decision ignored the testimony given by WCDSS that one placement for the children had already failed, and even though there were hundreds of inquiries to the children, none had been approved at the time of trial. The District Court held the special needs of the children against Mr. Faz as a way to terminate his rights, but ignored these special needs when deciding best interests and whether or not these children would or could find a permanent home after becoming legal orphans.

VI. LEGAL ARGUMENT

A. Standard of Review

A Petition to Terminate the Parental Rights can result in complete severance of a fundamental legal right. Based upon this, the standard of review that must be

used to determine the appropriateness of such a decision is subject to close scrutiny and can only be upheld if they are based on substantial evidence. *Matter of Parental Rights as to KDL,* 118 Nev. 737, 58 P.3d 181, (2002). Additionally, this Court held:

> It is well-settled that termination proceedings implicate a parent's fundamental rights in the care and custody of his or her child. NRS 128.005(1) and (2); *Matter of Parental Rights as to D.R.H.,* 120 Nev. 422, 426–27, 92 P.3d 1230, 1233 (2004); *Matter of Parental Rights as to C.J.M.,* 118 Nev. 724, 732, 58 P.3d 188, 194 (2002). In order to guard the rights of the parent and the child, the Nevada Legislature has created a statutory scheme intended to assure that parental rights are not erroneously terminated and that the child's needs are protected. NRS 128.005(1) (declaring "that the preservation and strengthening of family life is a part of the public policy of this State"); NRS 128.005(2)(a) (recognizing that "[s]everance of the parent and child relationship is a matter of such importance in order to safeguard the rights of parent and child as to require judicial determination"); *see generally* NRS Chapter 128. To that end, when petitioning the district court to terminate a parent's parental rights, a petitioner must demonstrate by clear and convincing evidence that termination is in the child's best interest and that parental fault exists. *See* NRS 128.090(2); NRS 128.105. This court will uphold the district court's termination order when it is supported by substantial evidence. *Matter of Parental Rights as to A.J.G.,* 122 Nev. 1418, 1423, 148 P.3d 759, 763 (2006).
>
> Based on the interests at stake in these types of proceedings, a petitioner has a high burden to establish that termination is warranted—clear and convincing evidence. NRS 128.090(2); *Santosky v. Kramer,* 455 U.S. 745, 769, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (explaining that courts are required to apply a heightened clear and convincing standard of proof in termination of parental rights cases); *Matter as to D.R.H.,* 120 Nev. at 428, 92 P.3d at 1234 (recognizing that Nevada applies a clear and convincing standard of proof in termination proceedings).

In re Parental Rights as to C.C.A., 128 Nev. ___,___, 273 P.3d 852, 854 (2012)

NRS 128.105 provides:

> Grounds for terminating parental rights: Considerations; required findings. 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. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and based on evidence and include a finding that:
>
> 1. The best interests of the child would be served by the termination of parental rights; and
>
> 2. The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 or demonstrated at least one of the following:
>
> (a) Abandonment of the child;
>
> (b) Neglect of the child;
>
> (c) Unfitness of the parent;
>
> (d) Failure of parental adjustment;
>
> (e) Risk 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;
>
> (f) Only token efforts by the parent or parents:
>
> (1) To support or communicate with the child;
>
> (2) To prevent neglect of the child;
>
> (3) To avoid being an unfit parent; or
>
> (4) To eliminate the risk of serious physical, mental or emotional injury to the child; or
>
> (g) With respect to termination of the parental rights of one parent, the abandonment by that parent.

The termination of Mr. Faz's right was not supported by substantial evidence and as a result, the State did not prove by clear and convincing evidence that it was in Maria's, Michael's or Nathaniel's best interest for Mr. Faz's rights to be terminated. Mr. Faz therefore asks that the District Court's order be overturned.

B. The District Court erred by denying Mr. Faz's right to a trial by jury as proposed in the Nevada State Constitution

The District Court erred when it denied Mr. Faz's demand to a jury trial. The termination of a parents rights is considered the intrusion on a fundamental liberty interest of the parent-child relationship. (The United States Supreme Court has decisively established that the parent-child relationship is a fundamental liberty interest. See, e.g., *Lehr v. Robertson*, 463 U.S. 248, 258, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983). The Nevada Constitution is clear when it states that a "right to a jury shall be secure to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law." Nev. Const. Art 1, Section 3.

The District Court, in its denial states that because there is no specific legislative grant, the right to a trial by jury on this matter would "have had to be recognized at the time the Nevada Constitution was enacted" which may be based upon this Court's decision in *Awada v. Shuffle Master, Inc.,* 123 Nev. 613. A, VI, 107-109. As this Court is aware, *Awada* dealt with a civil action which was equitable in nature. The Court found that because the Nevada constitution did not protect these equitable civil actions at the time of its drafting, it did not apply uniformly to all actions taken before a judge. This analysis is different when applied to the state's intrusion on a fundamental liberty interest such as a termination of that person's parental rights.

When a fundamental right is at stake, the right to a trial by jury should be ensured. The idea that a newly recognized right, such as one of a parent-child relationship, cannot not be afforded the same protections as other rights renders all newly defined fundamental interests as secondary to those that were conceived at the time of the writing of the Nevada Constitution. Both the United States and the

Nevada Constitution were written as living documents able to adapt and change to the changing times of the people and their rights it protected.

The Nevada Constitution clearly states that a jury trial may be waived by the parties when the case is one that is civil in nature. The process in which the state must terminate the parental rights of a citizen is through a civil case; therefore the right to a trial by jury was protected unless waived by the parties. Here, Mr. Faz invoked his right to a trial by jury and the denial was based upon case law that did not apply to the termination of parental rights and therefore was an error on the District Court level high enough to remand this case back for a proper trial in front of a jury.

C. The District Court erred in finding that it was in the best interests of Maria, Michael and Nathaniel to terminate Mr. Faz's parental rights by clear and convincing evidence.

The District Court in its decision found that based upon the statutorial presumptions, and that alone, that it was in the best interests of the children for the parental rights of Mr. Faz to be terminated. The District Court found that pursuant to NRS 128.109 (2) which states: "If a child has been placed outside of his or her home pursuant to chapter 432B of NRS and has resided outside of his or her home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights."

The District Court found that Mr. Faz was unable to rebut the presumptions that it was in Maria's, Nathaniel's and Michael's best interest that his rights be terminated based mainly upon the reasoning that Mr. Faz failed to show that there was a reasonable prospect, in a reasonable and foreseeable period of time, that he could provide for the basic needs of any number of additional children. A, VIV,

618-629. The burden of proof that Mr. Faz had to show in attempting to rebut an NRS 128.109 presumption is a preponderance of the evidence pursuant to *In re J.D.N.*, 128 Nev. ___,___, 283 P.3d 842, 849 (2012). The District Court erred in its conclusion that Mr. Faz had failed to rebut the presumption by a preponderance of the evidence based upon the evidence presented at trial. The testimony of Mr. Faz (and several other witnesses) showed that not only had Mr. Faz continued to be employed at the same job for not only the life of the case, but had for the last 22 years. A, VIV, 506-588. Mr Faz testified that he currently, and for the last 16 months, lived in a 2 bedroom apartment and was able to pay for it going forward. Id. Mr. Faz stated that he had insurance and that it covered the children he reunified with. Id. Mr. Faz was able to articulate a plan during the trial of how he would procure other resources in the community should his other three children be returned to him as well as a proper plan for supervision for all six children. Id.

The District Court erroneously based part of its decision on construed testimony from Mr. Faz about receiving financial assistance from WCDSS when he went with one of his sons (who he reunified with) to California for surgery. A, V1V, 618-629. Mr. Faz actually testified that he was offered financial assistance from WCDSS when his family support consisting of Delores Johnson indicated to WCDSS that she was interested in help with food. A, VIV, 506-588. Mr. Faz stated that he did not request this help, but only mentioned that Delores Johnson had run out of milk and juice to Ms. McKiernan, the social worker at the time, and Ms. McKiernan stated "not to worry about it." Id. Mr. Faz even testified that prior to his departure, he had the home well stocked as he always did (which is consistent with other testimony provided by WCDSS). Id.

The District Court found that Danielle Osier-Tater's testimony was "comprehensive" but offers little to what effect that had on its ruling. A, V1V,

618-629. In repeating the diagnosis' of the children throughout the order, the District Court expounds upon all the issues and problems that these children have and will have in the future, including the concerns that Ms. Osier-Tater had with their ongoing and future treatment. Id. Although the District Court held these diagnosis' against Mr. Faz and therefore the prospect of a reunification with him, it completely disregarded the fact that these same "issues" would be barriers for the successful adoption of the children as well, thereby jeopardizing their future. In fact, testimony showed that a proposed adoption had already failed based upon the high special needs of these children after only two weeks.

The District Court chose to disregard that Mr. Faz had been reunited with special needs children already. In fact, Mr. Faz has in his care, a legally blind son who is learning to read braille. A, VIV, 506-588. The District Court also disregarded the work that Mr. Faz had done with his other three children as far as school, which was a factor on the top five needs for the adoptive placement of Maria, Nathaniel and Michael. Id.

In determining the best interests of the children and their prospective long term placement, the District Court chose to not address the evidence presented at trial that although a "hundred" of people were interested in adopting Maria, Nathaniel and Michael, none had made it past the early stages of the process to actually be considered viable placement options. A, VIII, 448-473. The court failed to properly weigh the likely possibility that terminating these children's rights, with the high degree of special needs they current have, would make them legal orphans with very little hope of a permanent placement within a reasonable and foreseeable time period. Creating legal orphans that have such high needs, knowing that one adoptive placement already fell through within two weeks of placement, and that there was no immediate or foreseeable adoptive home for these children cannot be

seen as acting in the bests interests of these children when the biological father is and has still been working towards reunification with all three children.

D. The District Court erred in finding that there was parental fault on behalf of Mr. Faz sufficient enough to satisfy the high burden of clear and convincing evidence.

The District Court in its ruling when discussing the parental fault application of NRS 128.105 did so in the most basic of all terms. The District Court simply found that WCDSS had met its burdens without specifically citing to evidence to prove each and every count it found that Mr. Faz was to be held liable against.

The District Court erred in finding that clear and convincing evidence was shown proving that Mr. Faz had failed to make parental adjustment. Mr. Faz specifically testified as to his plan on how to take care of the special needs of Maria, Nathaniel and Michael. A, VIV, 506-588. Mr. Faz was able to maintain his employment for the last 22 years in addition to accessing new community resources such as Social Security Income. Id.

The District Court erred in its conclusion that there was a risk of serious injury to Maria, Nathaniel and Michael if they were returned to Mr. Faz's home seemingly solely based upon his oldest son, JC being in the home. A, V1V, 618-629. Mr. Faz testified that he understood what line-of-sight supervision was and that it was recommended for all of his children. A, VIV, 506-588. Mr. Faz stated that he knew that Maria would need help adjusting to living with her oldest brother, but that Mr. Faz already had a plan to make sure that JC would not be unsupervised with Maria or any of the other children in the future. Id. The District Court erred in completely discounting Mr. Faz's concerns and efforts in trying to get JC back into therapy when it characterized this lack of therapy by saying "that this perpetrator is presently not receiving therapeutic services because Mr. Faz

stated he cannot afford to obtain them." A, V1V, 618-629. Mr. Faz indicated that although JC was not currently in counseling, he was looking into it now that insurance was in place, but that he wanted to make sure it fit around JC's busy schedule. A, VIV, 506-588. JC's lack of therapy was not simply limited to a lack of funds. It was attributed to several different factors as expressed by Mr. Faz during his testimony, almost all of which were ignored by the District Court. Id.

The District Court erred in labeling Mr. Faz an unfit parent pursuant to NRS 128.105(2)(c). A, V1V, 618-629. The District Court based this finding of unfitness on Mr. Faz's indication that he did not have housing suitable for the other three children the days of the trial. Id. Mr. Faz was and is on a tight budget, as was evident throughout the trial. Why would Mr. Faz stretch his already limited income to procure a three or four bedroom home suitable for his other three children when for the three years prior to the trial WCDSS and the court had both told him that they would be terminating his rights? Requiring Mr. Faz to move into a larger home prior to a set date of the children being returned to him would have only caused more financial hardship on the family. Mr. Faz did the financially prudent thing by waiting to get his bigger housing, but was penalized for it anyway. Mr. Faz was able to prove through his testimony and his actions that he could accommodate more children as they were placed with him. A, VIV, 506-588.

Mr. Faz showed the ability and understanding to care for his children throughout his testimony including outlining specific action plans on how he was going to accommodate all their special needs. Id.

For the same reasons listed above, the District Court erred in its conclusion that Mr. Faz neglected or refused to provide the necessary subsistence for his children,

either through private employment (which Mr. Faz always had) or through public benefits (which Mr. Faz had procured). A, V1V, 618-629.

VII. CONCLUSION

Throughout the trial, and its order, the District Court ignored several key facts and disregarded others therefore making the termination of Mr. Faz's parental rights erroneous. The District Court's denial of Mr. Faz's jury demand was in violation of the Nevada Constitution as it is plainly written and therefore causes reversible error.

The District Court failed to recognize or acknowledge the burden of proof needed for Mr. Faz to rebut the presumptions that had been applied. The District Court failed to act in the children's best interest by terminating the parental rights of their father and making them legal orphans after knowing and receiving evidence that these children were all special needs and had one adoptive placement already fall though.

For these reasons, Mr. Faz requests this Court reverse and remand this case back to the district court level.

DATED this 22nd day of May, 2015.

JENNIFER J. LUNT
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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read This Appellate Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that the Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(3), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I hereby certify this this brief also complies with NRAP 32(4)–(6), that the typeface is Times New Roman in 14 point font and that it complies with the page volume limitation. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 22nd day of May, 2015.

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I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the APPELLANTS OPENING BRIEF to the following:

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