

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS F. JR.

Appellant,

v.

WASHOE COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Respondent.

_____ /

RESPONDENT'S ANSWERING BRIEF

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No. 67063

Appellant,

v.

WASHOE COUNTY DEPARTMENT
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Respondent.

I. STATEMENT OF THE ISSUES

Did the District Court err when the Court denied Appellant's jury trial demand in an action for the termination of the parental rights of the Appellant? Did the District Court err when the Court determined that termination of parental rights was in the best interest of M.D.F., M.A.F and N.C.F. and that Appellant failed to rebut the presumption that termination of parental rights was in the best interests of M.D.F., M.A.F. and N. F.? Did the District Court err when it determined parental fault on the part of Appellant?

II. STATEMENT OF THE CASE

This case stems from an ongoing juvenile dependency case as to M.D.F. , M.A.F. and N.C.F. and a resulting termination of parental rights action as to the children's natural father, the Appellant, Jesus F. Jr. JA at Vol. I, pages 94-96, Order After 48-Month Review Hearing; JA at Vol. IV, page 618-628, Order Terminating Parental Rights, filed September 24, 2014. Jesus F. Jr. appeals the District Court's Order Terminating Parental Rights, which found that the

termination of his parental rights was in the children's best interest and parental fault in the form of failure of parental adjustment pursuant to NRS 128.105(2)(d), risk of serious physical or emotional injury to the children pursuant to NRS 128.105(2)(e), parental unfitness pursuant to NRS 128.105(2)(c), neglect pursuant to NRS 128.105(b) and token efforts pursuant to NRS 128.105(2)(f) and NRS 128.109. JA at Vol. IV, page 644, Notice of Appeal; Id. at page 625, lines 23-26, page 626-627 lines 1-5, Order Terminating Parental Rights, filed September 24, 2015). Specifically, Jesus F. Jr. disputes the District Court's denial of his jury trial demand and the District Court's findings that termination was in the children's best interest and parental fault. See Generally, Appellant's Opening Brief, filed May 22, 2015.

III. STATEMENT OF FACTS

The Appellee, Washoe County Department of Social Services (hereinafter "Social Services") provided extensive testimony as to the risk and safety concerns as to the minor children M.D.F., M.A.F. and N.C.F., in addition to their older siblings, J.C.F, A.G. F. and L.R.F. JA at Vol. I, page 2, lines 18-25, page 3. At the time of the Court's Order Terminating Parental Rights, M.D.F., M.A.F. and N.C.F. had been in family foster care for 54 months. JA at Vol. I, page 1, Vol. II, page 195, lines 4-6.

Amanda Seifert testified as an investigative and assessment worker assigned to their father, Jesus F. Jr.'s case. JA at Vol. II, page 136, lines 9-11, page 137, lines 1-14, page 138, lines 16-19. Ms. Siefert first conducted an investigation on

July 18, 2009 concerning allegations that M.D.F had been molested by her 15-year-old stepbrother. JA at Vol. II, page 138, lines 23- 24, page 139 lines 1-7. Ms. Siefert's investigation concerned Jesus F. Jr., Pennie F., and their children, J.C.F., L.R.F., A.G.F., M.D.F., M.A.F. and N.C.F., JA at Vol. II at page 140, lines 23-24. Ms. Siefert spoke to Jesus F. Jr. about his 15-year-old stepson and requirements of his probation for a sexual offense. JA at Vol. II, page 139, lines 4-8, page 143, lines 18-22. Jesus F. Jr. indicated he did not think that was a problem or that he left all of the children without an adult supervisor. JA at Vol. II, page 139, lines 1-8, page 143, lines 18-22. Ms. Siefert found health and safety hazards and at the home was unclean and unkempt. JA at Vol. II, page 144, lines 16-21. Ms. Siefert also conducted a home visit on August 6, 2009. JA at Vol. II, page 147, line 24. Ms. Siefert conducted a safety plan due to Pennie F.'s drug use, the unclean home and lack of appropriate supervision for the children. JA Vol. II at page 148 lines 17-24. At that time, on August 6, 2009, Ms. Siefert found the home again to be dirty and Jesus F. Jr. would not be present to supervise the children in the evenings. JA at Vol. II at page 149 lines 7-18. Ms. Siefert referred M.D.F. for individual counseling to address molestation and provided a counseling referral for Pennie F. as well as drug rehabilitation for Pennie F.. JA at Vol. II, page 149, lines 21-24, page 150 lines 1-3. Ms. Siefert was again referred to the family on January 13, 2010 due to a report of Pennie F.'s drug use. JA at Vol. II at page 151, lines 1-7. Ms. Siefert responded to the residence and found the house to be very cluttered and dirty with health and safety hazards, dirty clothes laying around,

spoiled food, dirty dishes, trash piled up, clutter and broken items on the floor and the inability to walk through some of the rooms. JA at Vol. II, page 151 lines 18-23. Ms. Siefert interviewed Jesus F. Jr. at the scene who stated that he and Pennie F. were fighting due to Pennie F.'s drug use. JA at Vol. II page 151, line 24, page 152, lines 1-8. Jesus F. Jr. reported that they were being evicted due to nonpayment of rent for a couple of months and that their power was being turned off for nonpayment. JA at Vol. II at page 152 lines 8-11. Jesus F. Jr. was unable to provide Ms. Siefert with an appropriate plan for supervision for the children. JA at Vol. II, page 152, lines 14-24, page 153, lines 1-4. The children were placed in the protective custody at that time. JA at Vol. II, page 153, lines 12-13. Ms. Siefert was the caseworker from July, 2009 until February, 2010. JA at Vol. II, page 154, lines 22-24. Ms. Siefert provided referrals to the Robison house and substance abuse treatment, food vouchers and the safety plan to prevent removal. JA at Vol. II, page 155, lines 5-9.

On March 10, 2010, the Court found that J.C.F., A.G.F., L.R.F., M.D.F., M.A.F. and N.C.F. were children in need of protection due to neglect by Mr. and Pennie F.. JA at Vol. I, page 13, lines 11-13.

Katie Erickson testified as a Child Protective Services worker who was the permanency social worker with Social Services for J.C.F., A.G.F., L.R.F., M.D.F., M.A.F. and N.C.F. , assigned in January, 2010. JA at Vol. II, page 162, lines 12-19, page 163, lines 21-24, page 164, lines 1-10. Ms. Erickson was present at the time of removal and observed the conditions reported by Ms. Siefert. JA at

Vol. II, page 165, lines 1-13. Ms. Erickson also found that the children had significant behaviors. JA at Vol. II, page 168, lines 22-23. J.C.F. and L.R.F. were aggressive and were violent with their siblings. JA at Vol. II, page 168, lines 22-26. N.C.F. and M.A.F. had limited behavior issues but started to mimic the older kids and by acting out in similar ways. JA at Vol. II, page 168, lines 22-24, page 169, lines 1-5. J.C.F. had a psycho-sexual evaluation with Robert Styvesant to address his need for services related to sexually inappropriate behavior with M.D.F.. JA at Vol. II, page 169, page 170, lines 1-2. Ms. Erickson spoke to Jesus F. Jr. about the children's challenging behaviors. JA at Vol. II, page 170, lines 12-16. Jesus F. Jr. also minimized the sexually inappropriate behavior that J.C.F. had displayed towards M.D.F.. JA at Vol. II, page 170, lines 12-22. Jesus F. Jr. was evicted from his home and homeless for a period of time, and then obtain a motel room at the Desert Rose Inn. JA at Vol. II, page 174, lines 2-5. Ms. Erickson testified that Jesus F. Jr.'s motel room was not adequate for 6 children and an adult but also because of the sexually inappropriate behavior between J.C.F. and M.D.F. JA at Vol. II, page 175, lines 15-19.

While Ms. Erickson was the assigned caseworker, Jesus F. Jr. lost employment and then regained his employment but had been incarcerated for failure to pay child support for his other children. JA at Vol. II, page 176, lines 4-11. At the 12-month permanency hearing in the juvenile dependency case, Ms. Erickson testified she recommended a concurrent plan of reunification and termination of parental rights. JA at Vol. II at page 177, lines 1-2. Ms. Erickson

testified that she made this recommendation as Pennie F. was not in compliance with her case plan and Jesus F. Jr. did not have an adequate home to reunify with the kids. JA at Vol. II at page 177, lines 9-12. Ms. Erickson testified that Social Services had provided a grant to pay for deposit on a home for Jesus F. Jr., but he had not secured any sort of safe and appropriate housing for all 6 kids at that point. JA at Vol. II, page 177, lines 9-16. At the 15-month permanency hearing, Ms. Erickson recommended termination of parental rights for the parents. JA at Vol. II, page 178, lines 1-7. At that juncture, Pennie F. was not participating in her case plan activities and Jesus F. Jr. had not yet obtained appropriate housing in addition to his inability to understand special needs of his children. JA at Vol. II, page 178, lines 1-7.

Ms. Erickson also discussed the children's special behavioral challenges, including J.C.'s sexually inappropriate behaviors towards M.D.F.. JA at page 178, lines 11-13. J.C., L.R.F. and A.G.F. all had Individual Education Plans in school. JA at page 178, lines 12-14. All the children were participating in mental health treatment. JA at page 178 at lines 14-15. Ms. Erickson cited Jesus F. Jr.'s inability and unwillingness to understand the mental health needs of the kids, his minimizing of J.C.'s sexually inappropriate behaviors and also his minimizing of A.G.F.s brain tumor which resulted in blindness. JA at Vol. II, page 178, lines 8-21. Ms. Erickson made referrals for psychosocial rehabilitation, basic skills therapy, psychiatric appointments, psychosexual evaluation for J.C. with Robert Stuyvesant, psychosocial evaluation through Maple star for J.C.F., A.G.F., L.R.F.

and M.D.F. and medical and dental follow up with all these appointments. JA at Vol. II page 180, lines 16-23. Ms. Erickson was Jesus F. Jr.'s caseworker from January, 2010 through the summer of 2011. JA at Vol. II, page 181, lines 15-17.

Tamara Greenman-Reid testified as a treatment level foster parent for M.D.F., M.A.F. and N.C.F. JA at Vol. II, page 195, lines 4-6. Ms. Greenman-Reid is a treatment level foster parent who is trained specifically to understand and work with traumatized children. JA at Vol. II page 195, lines 18-22. Ms. Greenman-Reid described M.D.F.'s fear of her father, her fear of her brother J.C.F. and her destructive behavior around the home. JA at Vol. II, page 201, lines 11-13, page 202, lines 4-13. Ms. Greenman-Reid noted that M.D.F. significantly improved in her home. JA at Vol. II, page 202, lines 15-20. Ms. Greenman-Reid noted that N.C.F. and M.A.F. would hide sharp objects around the house. JA at Vol. II, page 206, lines 5-17. M.D.F., M.A.F. and N.C.F. were all on line-of-sight supervision due to physical fighting. JA at Vol. II, page 208, line 17-20. Ms. Greenman-Reid reported that M.D.F., M.A.F. and N.C.F. did not respond well to visitation and that the children were either hurt physically or emotionally during visits. JA at Vol. II, page 210, line 7-16. Ms. Greenman-Reid recommended continued line-of-sight supervision as the children felt safer and that when unsupervised the children get escalated in a child gets hurt either emotionally or physically. JA at Vol. II, page 211, lines 9-16.

M.D.F., M.A.F. and N.C.F.'s therapist, Danielle Osier-Tater provided testimony regarding her therapeutic concerns for the children. Ms. Osier-Tater

specializes in treating children in treating trauma and attachment issues, adoption and foster care. JA, at Vol. III, page 332, lines 19-21. Ms. Osier-Tater is also trained in trauma focused cognitive behavioral therapy. JA at Vol. III, page 333, lines 1-3. Ms. Osier-Tater Worked with M.D.F. N.C.F. and M.A.F. from April 2002 through July 2014. JA at Vol. III, page 334, lines 5-7. Ms. Osier-Tater diagnosed M.D.F. with posttraumatic stress disorder, generalized anxiety disorder, depressive disorder NOS and sexual abuse. JA at Vol. III, page 336, lines 7-12.

Ms. Osier-Tater diagnosed M.D.F. with posttraumatic stress disorder due to sexual abuse by her brother J.C.F.. and from another young man in a previous foster home. JA at Vol. III, page 337, lines 5-8. M.D.F. also expressed that she had a great deal of distress and anxiety about the domestic violence that had occurred between her mother and her father. JA at Vol. III, page 337, lines 10-15. M.D.F. was also diagnosed with reactive attachment disorder due to her report that she felt disconnected from her brothers and her mother and father. JA at Vol. III, 337 line 17-24 page 338, 1-8.

Ms. Osier-Tater also diagnosed M.D.F. with depressive disorder due to statements about self-loathing and hopelessness. JA at Vol. III, page 339, lines 1-5. M.D.F. began to improve when placed with her foster parents, according to Ms. Osier-Tater as she began to identify things she liked about herself. JA at Vol. III, page 339 lines 10-19. M.D.F. interacted very lovingly with her foster parents, she would often say this was the first place she felt loved and safe. JA at Vol. III, page 339, lines 10-19. Ms. Osier-Tater felt that safety was of the utmost

importance for M.D.F., as well as a nurturing environment, as M.D.F. had not felt safe in the past. JA at Vol. III, page 341, lines 1-7. M.D.F. also stated that she did not feel safe with her biological parents and also did not feel safe in the first foster home that she was in. JA at Vol. III, page 341, lines 9-14. Ms. Osier-Tater testified as to M.D.F.'s need for a healthy attachment to a permanent caregiver as soon as possible. JA at Vol. III, page 343, lines 6-8.

M.D.F. reported that she was fearful in regard to her brother J.C.F, that she loved him because he was her brother, but she was scared that he was going to do sexual things to her again. JA at Vol. III, page 341, lines 19-24, page 342, lines 1-5. She also said he had a history of being physically aggressive towards her and mean towards her and that she feared he would do these things if he was not well supervised. JA at Vol. III, page 341, lines 19-24, page 342, lines 1-5. M.D.F. also reported having trouble with thoughts about sexual trauma and sexual thoughts. JA at Vol. III, page 344, lines 21-24, page 345, lines 1-3.

Ms. Osier-Tater after working with M.A.F., diagnosed him with expressive language disorder and adjustment disorder with depressed mood. JA at Vol. III, page 345, line 24, page 346, lines 1-2. Ms. Osier-Tater found that M.A.F. had a lot of emotional dysregulation, as he could not express his emotions verbally and was aggressive with his brother and sister. JA at Vol. III, page 346, lines 7-17.

M.A.F. also disclosed sexual abuse at the hands of his older brother, J.C.F. JA at Vol. III, page 349, lines 21-24, page 350, lines 1-9. Ms. Osier-Tater testified that M.A.F. was fearful of J.C. and his physical violence towards him. JA at Vol.

III, page 352, lines 5-8. Ms. Osier-Tater testified that M.A.F. needed a home that had a good understanding of his learning disabilities, and a home that is stable and predictable. JA at Vol. III, page 351, lines 14-24. Ms. Osier-Tater testified that M.A.F. would need trauma-focused cognitive behavioral therapy. JA at Vol. III, page 352, lines 10-13.

Ms. Osier-Tater diagnosed N.C.F. with adjustment disorder and reactive attachment disorder. JA at Vol. III, page 354, lines 1-4. Ms. Osier-Tater testified the N.C.F. showed symptoms of impulsivity, hyperarousal and motor agitation. JA at Vol. III, page 354 lines 21 - 22. Ms. Osier-Tater felt that N.C.F. was highly distractible, had trouble with concentration and had trouble with his mood which was labile and explosive. JA at Vol. III, page 354, lines 21-24. N.C.F. demonstrated physical aggression and moved from being happy to crying and being angry disruptive very quickly. JA at Vol. III, page 355, lines 1-3. Ms. Osier-Tater also found the N.C.F. exhibited behavior that was sexual in nature, not normative for a 5-year-old child. JA at Vol. III, page 355, lines 4-14. Ms. Osier-Tater testified that N.C.F. engaged in behaviors that jeopardized his physical safety, such as head-banging or dangerous impulsive acts like running out into the street or refusing to follow an adult directive that could keep him safe. JA at Vol. III, page 355, lines 17-23. Ms. Osier-Tater testified that N.C.F. needs a home which is going to provide line-of-sight supervision, where there is low stimulation and not a lot of other children. JA at Vol. III, page 359, lines 14-21. Ms. Osier-Tater testified the N.C.F. would have significant functional impairments unless he

gets into the right environment. JA at Vol. III, page 360, lines 1–5. Ms. Osier-Tater was concerned about N.C.F.’s ability to be safe, his ability to follow normative societal rules. JA at Vol. III, page 360, lines 9–11.

Dr. Aberasturi performed a neuropsychological evaluation on M.D.F., M.A.F. and N.C.F.. JA at Vol. III, page 376, lines 4-6. Dr. Aberasturi diagnosed M.D.F. with posttraumatic stress disorder. JA at Vol. III, page 381, lines 7-13. Dr. Aberasturi felt that for M.D.F. to improve on posttraumatic stress disorder she needed safety and stability. JA at Vol. III, page 386, lines 13-21. Similarly, Dr. Aberasturi found that N.C.F.'s aggressiveness required line of sight supervision at all times. JA at Vol. III, page 398, lines 11-12.

Social Worker Jacinta Palmer, with Social Services was the assigned social worker for J.C.F., L.R.F., A.G.F., M.D.F., M.A.F. and N.C.F. from May 2011 to May 2013. JA at Vol. II, page 230, lines 23-24, page 231, lines 7-14, lines 17-19, page 262, lines 4-6. Ms. Palmer testified as to the children’s behavioral issues. J.C.F. had a history of sexualized behavior with M.D.F. and expressive language issues. JA at Vol. II, page 236, lines 19-24. M.D.F. engaged in sexualized behavior, particularly kissing J.C.F. on the lips. JA at Vol. II, page 230, lines 14-20. N.C.F. had therapy and psychosocial rehabilitation skills workers 2 to 3 times a week trying to work on his impulsive behaviors. JA at Vol. II, page 242, lines 12-18. Ms. Palmer testified as to N.C.F.’s poor social boundaries, impulsive and dangerous actions. JA at Vol. II, page 242, lines 12-18. N.C.F. went into kindergarten, but he had difficulty managing a full day, he would throw chairs,

hitting and punching kids punching staff. JA at Vol. II, page 242, lines 19-24, page 243, lines 1-4.

While Ms. Palmer was the caseworker, Jesus F. Jr. struggled even to maintain a residence for himself, much less 6 children. Jesus F. Jr. was residing at the Desert Rose Motel, spring or summer of 2011. JA at Vol. II, page 243, lines 5-20. Jesus F. Jr. was arrested for 10 days for past child support action was able to go back to the hotel. JA at Vol. II, page 244, lines 7-10. Ms. Palmer testified that the significant barrier for reunification of the children with Jesus F. Jr. was stable housing and an ability to provide safe and appropriate supervision for the children, particularly with J.C.F. due to his history of sexual abuse of M.D.F.. JA at Vol. II, page 244, lines 13-24.

At the 18-month review hearing, Ms. Palmer recommended a permanency plan of termination of parental rights and adoption. JA at Vol. II, page 246, line 24, page 247 lines 1-8. Ms. Palmer recommended this plan because Jesus F. Jr. still did not have housing or supervision that would be necessary to meet the needs. JA at Vol. 1, page 247, lines 4-8. Ms. Palmer testified that “He [Jesus F. Jr.] would be talking about [sic] he was trying to get some housing that would be appropriate, but he, at that time and still not gotten it.” JA at Vol. II, page 247, lines 4-8. While Ms. Palmer was the caseworker, Jesus F. Jr. stayed at various motels and with friends. JA at Vol. II, page 251, lines 1-6.

At the 24-month review hearing, Ms. Palmer again recommended a permanency plan of termination of parental rights and adoption. JA at Vol. II, page

251, lines 9-16. Ms. Palmer testified that, again the barrier to reunification was Pennie F. would not get appropriate housing, provide appropriate supervision, and meet the children's therapeutic needs. JA at Vol. II, page 17-24. At one point, Jesus F. Jr. gave up his housing to serve time in jail for a child support warrant. JA at page 255, lines 8-19.

At the 33-month review hearing and the 36-month review hearing, Jesus F. Jr. still did not have sufficient housing income or supervision for the children. JA at Vol. II, page 255, lines 2-3, lines 8-19, page 257, lines 1-12, 15-24, page 259, lines 3-5. Eventually, Jesus F. Jr. was able to reside with the oldest three children, J.C.F., L.R.F. and A.G.F.. JA at Vol. II, page 273, lines 8-13.

Julia Bauer was assigned as the social worker for M.D.F., M.A.F. and N.C.F. in May, 2013. JA at Vol. II, page 277, lines 20-24, page 278, lines 1-24, page 280, lines 12-13. At the time Ms. Bauer was assigned to the case, M.D.F., M.A.F. and N.C.F. still needed line of sight supervision. JA at Vol. II, page 287, line 1. M.D.F. still exhibited sexualized behavior. JA, at Vol. II, page 288, lines 14-15. Ms. Bauer had concerns about J.C.F. being placed in the same home as M.A.F., as M.A.F. had suffered potential sexual abuse by his brother J.C. JA at Vol. II, page 290, lines 18-20.

Ms. Bauer was also concerned that Jesus F. Jr. did not understand or appreciate the gravity of the children's supervision needs. JA at Vol. II, page 287, lines 14-22. Ms. Bauer testified that M.D.F. needed supervision due to her sexualized behavior and J.C.F.'s behavior towards her in the home. JA at Vol. II,

lines 14-23. Ms. Bauer also and knowledge the M.A.F. needed line of sight supervision as well. JA at Vol. II, page 289, lines 16-17. Jesus F. Jr. was, again, very dismissive of M.A.F.'s supervision needs. JA at Vol. II, page 290, lines 3-5. This was despite the fact M.A.F. had made statements of potential sexual abuse by his brother J.C. and made statements that he did not feel safe around his brother. JA at Vol. II, page 290 lines 12 -18.

Ms. Bauer had a specific conversation with Jesus F. Jr. in the fall of 2013 with respect to the sexual abuse allegations in respect to M.A.F., M.D.F. and J.C.F. JA at Vol. II, page 291, lines 5-10. Ms. Bauer testified that Jesus F. Jr. minimized the allegations and reported that he did not think that having J.C.F. supervise M.D.F. was a “big deal,” as long as M.D.F. seems to be having a good time. JA at Vol. II, page 291, lines 5–24, page 292, lines 1-6. Ms. Bauer reported the Jesus F. Jr. did not seem to take into account that he was placing M.D.F. in a position where she could be potentially victimized or feel victimized by J.C.’s supervision over her. JA at Vol. II, page 291, lines 21-24, page 292, lines 1-6. When Jesus F. Jr. was confronted the sexual abuse allegations between J.C. and M.A.F., Jesus F. Jr. felt that it did not happen and that Social Services and treatment providers were attempting to put up barriers to reunification. JA at Vol. II, pages 292, lines 9-24, page 293, lines 1-4. Ms. Bauer testified that Jesus F. Jr. never provided any plan to maintain appropriate supervision or safety for M.D.F., M.A.F. and N.C.F.. JA at Vol. II, page 300, lines 3–21.

Ms. Bauer testified that Jesus F. Jr. failed to understand M.D.F., M.A.F. and N.C.F.'s extensive supervision needs for their safety as she stated: "[J]ust even in conversations with Jesus F. Jr. . . . he doesn't believe that they're impulsive. He doesn't believe that their impulsivity results in them being unsafe. He doesn't believe that putting children contact with their perpetrator results in a safety threat so as parenting and conversations with them would need to be more reflective of someone who truly understands how the children special needs impact their safety. Jesus F. Jr. failed to understand how to provide appropriate supervision and how their needs impact their safety." JA, at Vol. II, page 299, lines 22-24, page 300, lines 1-2. Furthermore, Ms. Bauer testified that when Jesus F. Jr. participated in meetings regarding services for his children, he was not receptive. JA at Vol. II, page 295, lines 11-13. Ms. Bauer reiterated that she believed Jesus F. Jr. was unfit in that he did not understand the gravity of the children psychological issues and he had an inability to supervise and manage the children's safety. JA at Vol. III, page 326, lines 8-15.

Adoption social worker Lindsay Maurins testified that M.D.F., M.A.F. and N.C.F. were adoptable children. JA at Vol. III, page 401, lines 17-24, page 402 lines 1-16, page 403 lines 8-11, page 411, lines 15-24. Ms. Maurins testified that all 3 children were adoptable children as they were under the age of 12, they were able to bond to their current family and they were bonded to each other. JA at Vol. III, page 411, lines 18-24. Ms. Maurins testified that the largest barrier to their adoption was their legal status. JA at Vol. III, page 411, lines 7-9. Ms. Maurins

testified that the agency had identified the children's top needs for an adoptive home. JA at Vol. III, page 408, lines 9 - 15. Included in the children's needs were: 1) a family that can be strong advocates for them educationally and work with them on individual education plans, 2) parents that are predictably structured to have routine consistency at home, 3) parents that are nurturing and affectionate with experience in emotional trauma and sexual trauma, and 4) parents that are willing to participate in ongoing therapeutic and psychiatric service for the children. JA at Vol. III, page 408, lines 15-24, page 409, lines 1-4.

Adoption supervisor Mikey Franklin also testified as she supervised the recruitment and training unit for the Washoe County Department of Social Services. JA at Vol. III, page 448, lines 19-24, page 449, lines 19-24. Ms. Franklin testified that over 100 families had expressed interest in adopting M.D.F., M.A.F. and N.C.F.. JA at Vol. III, page 454, lines 3-8.

Jesus F. Jr. provided testimony on the last day of trial. Jesus F. Jr. testified that he currently had a two-bedroom, 2 bathroom apartment, but was looking into low income housing. JA at Vol. IV, page 510, lines 19-24, page 511, lines 6-8. Jesus F. Jr. testified that he resided with J.C. F., L.R.F. and A.G.F. Jesus F. Jr. testified that he obtained the residence on May 1, 2013. JA at Vol. IV, page 560, lines 8-11. At that time, the children had been in out-of- home care for over 40 months. JA at Vol. I, page 1. Jesus F. Jr. admitted that his residence was only approved for J.C.F., A.G.F., and L.R.F.. JA at Vol. IV, page 560, lines 12-13, page 561, lines 6-12. Jesus F. Jr. testified that he was looking for residence through

HUD housing, however he was not on the list. JA at Vol. IV, page 561, lines 16-24, page 562, lines 1-2. Jesus F. Jr. acknowledged that he had a felony conviction which was an impediment to his finding housing. JA at Vol. IV, page 562, lines 1-4. Jesus F. Jr. then acknowledged that his felony had been expunged in July, 2011. JA at Vol. IV, page 562, lines 12-24. Jesus F. Jr. acknowledged however that since that time he had not gone on a housing list for HUD, Project Restart or Reno Housing Authority. JA at Vol. IV, page 561 lines 13-24, page 562, lines 1-2, page 580, lines 3-22. Jesus F. Jr. admitted that Social Services had paid rent for several months that year, so that he could go to California for A.G.F.'s surgery. JA at Vol. IV, page 577, lines 4-15. Jesus F. Jr. also acknowledged that J.C.F. had undergone a psychosexual evaluation, but was not in counseling. JA at Vol. IV, page 569, lines 19-24, page 570, lines 10-11.

On September 24, 2014, the District Court entered an Order Terminating the Parental Rights of Jesus F. Jr.. JA at Vol. IV, page 618. The court noted that Jesus F. Jr. had successfully reunified with M.D.F., M.A.F. and N.C.F.'s 3 older siblings. JA at Vol. 4, page 619, lines 4-6. The District Court noted that the 5 eldest children had previously been in foster care between 2005 and 2007. JA at Vol. IV, page 619, lines 11-12. The District Court found that the reasons for the 2010 removal of the children were Pennie F.'s incarceration, her ongoing methamphetamine use, the unsafe condition in the home due to clutter, garbage and old food, the loss of power, imminent eviction, and Jesus F. Jr.'s inability to articulate a long-term plan for the children's supervision and care. JA at Vol. IV,

page 619, lines 13-17. The District Court found specifically that Jesus F. Jr. struggled to maintain minimally adequate income and appropriate housing for the children, residing in a motel room for over 2 years, which was not suitable for the children. JA at Vol. IV, page 620, lines 1-5. The Court found that M.D.F., M.A.F. and N.C.F. had been foster care for 54 consecutive months, which gave rise the presumptions that Jesus F. Jr. had only made token efforts pursuant to NRS 128.105(f) and that it was in the children's best interest that Jesus F. Jr.'s rights be terminated. JA at Vol. IV, page 621, lines 1-5.

The District Court specifically discuss the findings of Ms. Osier-Tater regrdaing the children's special needs. JA at Vol. IV, page 622, lines 8-12. The Court found that Jesus F. Jr.'s testimony was insufficient to demonstrate that he could meet the basic needs and special needs of M.D.F., M.A.F. and N.C.F. JA at Vol. IV, page 624, lines 8-12. The District Court cited multiple witnesses testimony that Jesus F. Jr. minimized M.D.F. and M.A.F.'s sexual victimization by J.C.F. and failed to provide or understand the need for close supervision during visitation. JA at Vol. IV, page 624, lines 11-14. The Court was also concerned that Jesus F. Jr. was not meeting the therapeutic needs of one of the children in his home. JA at Vol. IV, page 624, lines 16-19. The Court also found that Jesus F. Jr. provided no plausible plan for assuring the safety of the sexual abuse victims from their perpetrator and found that Jesus F. Jr. provided no evidence that M.D.F. and M.A.F. would not be harmed, even emotionally or psychologically by sharing a home with a brother who sexually assaulted them. JA at Vol. IV, page 624, lines

21-26, page 625, lines 1-3. The District Court also found, pursuant to the testimony of Lindsey Maurins, that the significant barrier to adoption for the children was that parental rights were still intact. JA at Vol. IV, page 625, lines 8-14.

Based upon these findings the Court found that Jesus F. Jr. had failed to adjust, pursuant to NRS 128.105(2)(d), as he had demonstrated no current or future ability to meet the children's basic or special needs. JA at Vol. IV, page 625, lines 23-26. The Court found that there was a risk of serious physical, mental or emotion injury to the children, there was no plan for the children's safety being placed in the home with a sibling who sexually perpetrated on them. JA at Vol. IV, page 626, lines 2-7. Currently, that sibling was not receiving services. JA at Vol. IV, page 626, lines 5-6. The District Court found that Jesus F. Jr. was an unfit parent, as he was unable to provide M.D.F., M.A.F. and N.C.F. with proper care and support over a period of 3 years. JA at Vol. IV, page 626, lines 8-13. The Court found that Jesus F. Jr. had neglected the children, as he had not provided for their subsistence. JA at Vol. IV, page 626, lines 15-18. The District Court further found that Jesus F. Jr. had not rebutted the presumption of token efforts to care for the children, pursuant to NRS 128.105(2)(f), as the children had been in foster care for 54 consecutive months. JA at Vol. IV, page 635, lines 1-2. The District Court found that termination of parental rights was in the children's best interests, so that they could find a permanent home to meet their needs so they could lead healthy lives. JA at Vol. IV, page 627, lines 1-4.

IV. STANDARD OF REVIEW

When reviewing an order of the Family Division of the District Court terminating parental rights, the Supreme Court closely scrutinizes the order to determine if substantial evidence supports the District Court's factual findings; however the Court will not substitute its own judgment for that of the District Court. In re J.D.N., 283 P.3d 842, 850 (Nev. 2012). The Supreme Court will not substitute our judgment for that of the District Court in determining the credibility of witnesses. In re J.D.N., 283 P.3d 842, 152 (Nev. 2012), citing Matter of the Parental Rights as to C.J.M., 118 Nev. 724, 732, 58 P.3d 188, 194 (2002).

V. SUMMARY OF ARGUMENT

Jesus F. Jr. argues that the District Court erred when it did not grant his demand for a jury trial in the instant case. While the Nevada Constitution recognizes the right to a jury trial, the Nevada Supreme Court has recognized in Awada v. Shuffle Master Inc., 123 Nev. 613, 619, 173, P.3d. 707, 711 (2007) that the right to a jury trial only extends to those civil actions as recognized at the time of the passage of the Nevada Constitution in 1864. Thus, the District Court did not err in denying Jesus F. Jr.'s right to a jury trial, as there is no evidence that the statutory action of termination of parental rights was in existence at that time.

On January 13, 2010, M.D.F., M.A.F. and N.C.F., along with their older siblings, were removed from the care and custody of their parents and placed in the protective custody of the Washoe County Department of Social Services. JA at Vol. I, page 3, lines 14–18. M.D.F., M.A.F. and N.C.F. spent the next 4 ½ years in

out-of-home care. JA at Vol. I, page 13, lines 17–18, Vol. II, page 195, lines 4-6. All 3 children have extensive special needs, including post-traumatic stress disorder, adjustment disorder, reactive attachment disorder, and sexual abuse (victim). JA at Vol. III, page 336, lines 5-12, page 345, line 24, page 346, lines 1-2, page 354, lines 1-4. Testimony established that, throughout the majority of the case, Jesus F. Jr. failed to obtain even minimal housing to provide for the basic needs of the children and even at the time of trial did not have appropriate housing. JA at Vol. II, page 181, lines 15-17, page 24, lines 13-24, Vol. IV, page 511, lines 6-7, page 561, lines 13-24, page 562, lines 1-2, page 580, lines 3-22. Testimony further established that Jesus F. Jr. failed to adequately understand or acknowledge the supervision and safety needs of M.D.F., M.A.F. and N.C.F. JA at Vol. II, page 143, lines 18-22, page 170, lines 12-22, page 178, lines 11-21. Furthermore, testimony established that M.D.F., M.A.F. and N.C.F. are adoptable. The District Court, based upon the length of time M.D.F., M.A.F. and N.C.F. were in foster care and Jesus F.'s insufficient efforts to meet these children's needs, and the adoptability of the children found sufficient evidence to terminate parental rights as to M.D.F., M.A.F. and N.C.F. JA at Vol. IV, page 639, lines 23-25, page 640, lines 1-26, page 641, lines 1-3. The District Court's Order should be upheld as being supported by substantial evidence.

V. LEGAL ANALYSIS

A. The Appellant Does Not Have a Constitutional Right to a Trial by Jury in a Termination of Parental rights Action

On July 3, 2014, Appellant J.C.F. Jr. filed a Demand for a Jury Trial, asserting that under Art. 1, §8 (5) and Art. 1 § 3 Of the Nevada Constitution, entitled him to a jury trial due to the liberty interest in the parent–child relationship, (JA pages 99 -101). First, Jesus F. Jr. argues that the right to a jury trial is available through the Due Process clause of the Nevada Constitution Article 1, § 8(5). The United States District Court for the District of Nevada in O'Connor v. Nevada, 507 F. Supp. 546, 548 (1981) held that the 7th Amendment of the U.S. Constitution’s guaranty of a jury trial in civil cases is not an element of due process applicable to the state courts through the Fourteenth Amendment. Termination of parental rights actions are civil in nature. Though it is true that termination of parental rights involves the parent-child relationship, and requires a judicial determination, it is still a civil action. Therefore, Jesus F. Jr.’s argument that he is entitled to be tried by his peers in the termination case through Nevada’s due process clause is misplaced.

Article 1 § 3 of the Nevada Constitution states “the right of trial by Jury shall be secured to all and remain inviolate forever...” In Awada v. Shuffle Master, Inc., 123 Nev. 613, 619, 173 P.3d 707, 711 (2007) the Supreme Court of Nevada held that the phrase “shall... remain inviolate forever” indicates the intent of the Framers to perpetuate the jury trial right as they understood it in 1864. The Nevada Supreme Court stated in Awada, “Constitutional issues, such as one's right

to a jury trial, present questions of law that we review de novo. As regards the jury trial right, Nevada's Constitution provides that “[t]he right of trial by Jury shall be secured to all and remain inviolate forever.” We recently have explained that the Nevada Constitution's framers' use of the phrase “shall ... remain inviolate forever,” indicates their intent to perpetuate the jury trial right as they understood it in 1864, when they adopted Nevada's Constitution. Thus, Nevada's jury trial right is defined by English common law-the antecedent of this country's jurisprudence-as modified at the time of the Nevada Constitution's adoption. See, *Id.* at 618, 619, 173 P.3d at 711, *Emphasis added.*

In Awada, the Court clearly articulates the rule that the right to a jury trial, as set forth in the Nevada Constitution, is only granted to those actions in existence at the time the Nevada Constitution was adopted. Appellant offers no evidence that jury trial was afforded to citizens in severance of their parental rights at the time of the framing of the Nevada Constitution. In fact, there is still no statute that specifically gives parents right to a jury trial in termination of parental rights cases. Thus, such right in termination cases does not fall under the “shall... remain inviolate forever” phrase of Article 1, §3 of the Nevada Constitution.

Furthermore, the Montana Supreme Court, using a similar analysis has found that its state constitution did not provide for the right to a jury trial in termination of parental rights cases. In re C.L.A., 685 P.2d 931 (1984). Similarly to the Nevada Supreme Court, the Montana Supreme Court said that its constitution only guarantees the right to a jury trial in the class of cases in which

the right was enjoyed when the constitution was adopted. See, Id. at 933.

Furthermore, the Court found that when the Montana Constitution was adopted in 1889, there was no right to a jury trial in civil proceedings for termination of the parent-child relationship because there existed no such proceeding. See, Id.

Currently, M.C.A. 41-3-607(5), specifically states that “there is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.”

Appellant asserts that Awada is distinguishable from the instant case, as it concerned in action in equity and a termination of parental rights action concerns the parent-child relationship. Awada however, clearly articulates the rule that the right to a jury trial only applies to actions and jurisprudence, as the framers of the Nevada Constitution understood them at the time of the Nevada Constitution’s adoption. See, Awada at 123 Nev. 618, 619, 173 P.3d at 711. The Court in Awada does not limit its analysis to actions in equity, but is to actions existing in the common law jurisprudence at the time the Constitution was adopted. This is the law in the state of Nevada. Appellant offers no basis to assert that a termination of parental rights action was a part of Nevada jurisprudence in 1864.

Appellant further argues that is right to a jury trial, is mandated by the constitutional protections afforded the parent-child relationship. While certain constitutional protections are provided in an action for termination of parental rights such protections are not without limit. For example, the United States

Supreme Court in Lassiter v. Department of Social Services of Durham County N.C., 452 U.S. 18, 26-27, 101 S.Ct. 2153, 2159 (1981), found that a parent did not *per se* have the right to counsel in a termination of parental rights action, as the parent did not risk the loss of personal liberty. Instead, the Court looked to its precedent establishing “fundamental fairness” in its procedures and applied the due process balancing test of Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903. See, *Id.* The Mathews test evaluates “the private interests at stake, the government’s interest and the risk that the procedures used will lead to erroneous decisions.” See, *Id.*

As stated in Lassiter, the parents’ interest is in the companionship, care custody and management of their children. See, *Id.* The government’s interest in a termination of parental rights case is the welfare of the children, as well as an accurate and just decision. Id. at 28, 101 S.Ct. at 2159. Under the Mathews test however, the Court must evaluate the risk that the procedures used will lead to erroneous decisions. In the instant case, there is minimal risk that the use of a district court judge as opposed to a jury would lead to an erroneous decision. The termination of parental rights action is heard by a jurist familiar with the rules of evidence, the legal standards of a termination action pursuant to NRS chapter 128 and the Rules of Civil Procedure. Jesus F. Jr. was afforded counsel for purposes of trial. Even using the Mathews due process analysis, Jesus F. Jr. would not be entitled to a jury trial under the Nevada Revised Statutes, the Nevada Constitution, or the United States Constitution. The District Court did not err when it denied

Jesus F. Jr.'s jury trial demand. The District Court followed Nevada law and the Nevada Supreme Court's precedent under Awada.

B. Substantial Evidence Supports the District Court's Finding of Parental Fault.

On September 24, 2014, the District Court issued an order terminating the parental rights of Jesus F. Jr. JA at Vol. IV, page 641, lines 4–5. The District Court found the following grounds of parental fault: failure of parental adjustment pursuant to NRS 128.105 (2)(d), the risk of serious injury to the children if returned to Jesus F. Jr.'s home, pursuant to NRS 128.105 (2)(e), parental unfitness pursuant to NRS 128.105 (2)(c), neglect pursuant to NRS 128.105 (b) and token efforts to care for the children pursuant to NRS 128.105(2)(f). JA at Vol. IV, page 639, lines 20–26, page 640, lines 1–24. As M.D.F., M.A.F. and N.C.F. were in foster care for 54 consecutive months, the District Court applied the presumption that Jesus F. Jr. had only made token efforts to care for the children pursuant to NRS 128.105(2)(f). The District Court found that Jesus F. Jr. had not rebutted the token efforts presumption. JA at Vol. IV, page 640, lines 22–23.

In order for the District Court to enter an order terminating parental rights, the court must find at least one ground of parental fault pursuant to NRS 128.105(2). NRS 128.105. The District Court found failure of parental adjustment, in that Jesus F. Jr. had not demonstrated current or future ability to meet either the basic needs or special needs of M.D.F., M.A.F. or N.C.F.. JA at Vol. IV, page 639, lines 2–26. Failure of parental adjustment occurs when a parent is unable or unwilling within a reasonable period of time to correct the circumstances, conduct

or conditions which led to the placement of the children outside of the home, notwithstanding reasonable and appropriate efforts made by the State or agency to return the child to his or her home. NRS 128.0126.

What is a reasonable time to correct the circumstances, conduct or conditions which led to the children's placement outside the home? In the instant case, M.D.F., M.A.F. and N.C.F. had been in family foster care for over 54 months or over 4 1/2 years. JA at Vol. I, page 1, Vol. II, page 195, lines 4-6. Under the Adoption and Safe Families Act 42 U.S.C.A. § 675, (5)(C) the Court must have a hearing to determine the child's appropriate permanency plan within 12 months from the date the child entered foster care. M.D.F., M.A.F. and N.C.F. were in family foster care over 4 times the allotted time for children to have a permanency plan.

Ms. Siefert testified that at the time of removal on January 13, 2010, the home was filthy, Jesus F. Jr. reported they were being evicted due to nonpayment of rent, that the power was being turned off due to nonpayment of rent and Jesus F. Jr. had no viable supervision plan for his children. JA at Vol. II, page 152, lines 18-23, page 152, lines 1-24, page 153, lines 1-4.

Ms. Erickson was Jesus F. Jr.'s caseworker from January, 2010 through the summer of 2011. JA at Vol. II, page 181, lines 15-17. During that time, Jesus F. Jr. had been residing at a motel and was homeless for a period of time. JA at Vol., page 174, lines 2-5. Furthermore, Jesus F. Jr. still minimized J.C.F.'s sexual abuse of M.D.F. and was demonstrating an inability to understand the special needs of his children. JA at page 174, lines 2-5, page 175, lines 15-19.

Ms. Palmer was Jesus F. Jr.'s caseworker from May, 2011 to May 2013. JA at Vol. II, page 230, lines 23-24, page 231, lines 7-14, lines 17-19, page 262, lines 4-6. During that time, Jesus F. Jr. still failed to demonstrate a safe and appropriate home with appropriate supervision of the children, given their level of needs and M.D.F.'s sexual abuse. JA at Vol. II, page 244, lines 13-24. Ms. Bauer was assigned as Jesus F. Jr.'s caseworker in May, 2013, and testified that Jesus F. Jr. still did not understand the gravity of the children's supervision needs. JA at Vol. II, page 287, lines 14-22. This is particular concerning where the children need line-of-sight supervision to maintain their safety and the reported sexual abuse of M.D.F. and M.A.F. by their older sibling.

Jesus F. Jr. testified that he was "looking into" low income housing for all of the children, but was not on the waiting list for HUD, Project Restart or Reno Housing Authority. JA at Vol. IV, page 511, lines 6-7, page 561, lines 13-24, page 562, lines 1-2, page 580, lines 3-22. After over 4 years in foster care, Jesus F. Jr. did not have a plan to provide for either the children's immediate basic or safety needs. Jesus F. Jr. almost admitted that J.C.F. the older sibling accused of sexual abuse was not receiving any therapeutic services. JA at Vol. IV, page 569, lines 19-24, page 570, lines 10-11. At no time in the testimony did Jesus F. Jr. establish that he has adjusted his circumstances within a reasonable period of time, pursuant to NRS 128.0126.

The same facts apply to the District Court's finding that Jesus F. Jr. had made only token efforts to care the children and had failed to rebut the presumption of token efforts pursuant to NRS 128.109(1)(a). The presumption

that a parent has only made token efforts to care for a child arise when a child has been in out-of-home care for 14 out of 20 months. See, NRS 128.109(1)(a) . These children were in family foster care for over 54 months. The Court found that Jesus F. Jr.'s testimony failed to rebut the presumption of token efforts. JA at Vol. IV, page 621, lines 1-5. Jesus F. Jr. simply failed to provide, within a reasonable time, a plan to provide for the basic and safety needs of these children. Jesus F. Jr.'s testimony was at best promissory, after a period of 54 months in foster care . Furthermore, the weight of the testimony from Ms. Siefert, Ms. Erickson and Ms. Bauer demonstrated that Jesus F. Jr. had failed to adequately understand or acknowledge the supervision and safety needs of M.D.F., M.A.F. and N.C.F.. JA at Vol. II, page 143, lines 18-22, page 170, lines 12-22, page 178, lines 11-21. Jesus F. Jr.'s testimony that he would "look into" public housing and welfare benefits was simply insufficient to rebut the token efforts presumption in this case.

The District Court also found that Jesus F. Jr. was an unfit parent who had neglected M.D.F., M.A.F. and N.C.F.. The District Court found that Jesus F. Jr. had failed, over a period of 3 years to provide M.D.F., M.A.F. and N.C.F. with proper care and support and that his testimony that he was looking into housing and food stamps was not sufficient effort over the period of time these children were in foster care. JA at Vol. IV, page 640, lines 8 – 14. The District Court felt that Jesus F. Jr. and not put in the effort to ensure that the children special needs were met. JA at Vol. IV, page 640, lines 11 – 13.

Lastly, the District Court found that there is a risk of serious injury to M.D.F., M.A.F. and N.C.F. if they were returned to Jesus F. Jr.'s home pursuant to

NRS 128.105(2)(e). The District Court noted that even the discussion of the minor children's safety, only addressed opportunities for physical victimization and not the children's need for emotional and psychological safety. JA at Vol. IV, page 638, lines 21–26, page 639, line 1. The District Court found that Jesus F. Jr. presented no evidence that M.D.F. and M.A.F. would not be harmed emotionally or psychologically by sharing a home with the brother who sexually assaulted them. JA at Vol. IV, page 639, lines 1–3. According to Ms. Osier-Tater, even M.D.F. doubted her father's willingness or ability to keep her safe and that personal safety is one of M.D.F.'s deepest needs. JA at Vol. III, page 340, lines 20–24, page 342, lines 10–19.

The District Court's findings of parental fault in this case were well documented and supported by the testimony of multiple witnesses. Jesus F. Jr. was the sole witness on his own behalf, and the court evaluated the credibility of his testimony. The District Court specifically found that Jesus F. Jr.'s testimony failed to rebut the presumption of token efforts and failed to demonstrate an immediate ability to meet the basic and special needs of these 3 children. The District Court's findings of parental fault were amply supported by substantial evidence presented at trial.

C. Substantial Evidence Supports the District Court's Finding that Termination of Parental Rights is in the Children's Best Interests.

The District Court found that it was in M.D.F., M.A.F. and N.C.F.'s best interest that Jesus F. Jr. is parental rights be terminated and that Jesus F. Jr. had failed to rebut the presumption that termination of parental rights was in the

children's best interest. JA at Vol. IV, page 635, lines 6–8. The District Court's findings were supported by substantial evidence.

NRS 128.105 (1) provides that the court must find that the best interest of the child would be served by the termination of parental rights. NRS 128.109(2) provides that a child was placed outside of his or her home pursuant to NRS 432B and has resided outside of their home for 14 out of any consecutive 20 months, the best interests of the child must be presumed to be served by the termination of parental rights. Furthermore, NRS 432B.553(2) provides that if a child has been in foster care for 14 out of any consecutive 20 months, the agency shall include the termination of parental rights to that child in its plan for permanent placement.

In the instant case, the District Court examined the special needs of each child and evaluated whether Jesus F. Jr. could provide for the children's basic needs their safety needs and their special needs. JA at Vol. IV, page 638, lines 5–15. Jesus F. Jr. has failed to provide for simply M.D.F., M.A.F. and N.C.F. housing needs for the life of the case. Even at the time of trial, Jesus F. Jr. testified that he was “looking into” low income housing for all of the children, but was not on the waiting list for HUD, Project Restart or Reno Housing Authority. JA at Vol. IV, page 511, lines 6-7, page 561, lines 13-24, page 562, lines 1-2, page 580, lines 3-22. After over 4 years in foster care, Jesus F. Jr. did not have a plan to provide for either the children's immediate basic or safety needs. The District Court evaluated Jesus F. Jr.'s testimony as “vague, insubstantial and not reassuring” in what it termed the “glacial pace of progress in the juvenile dependency case.” JA at Vol. IV, page 635, lines 13–20. Again, the District Court cited Jesus F. Jr.'s

testimony of “will look into” low income housing and “will check” on the availability of food stamps. JA at Vol. IV, page 635, lines 13–17. The District Court found that even after Jesus F. Jr. received sufficient housing for three of his children, his financial status was at best, tenuous, utilizing the financial resources of the Department. JA at Vol. IV, page 577, lines 4-15, page 635, lines 21-26, page 636, line 1.

Multiple witnesses testified as to Jesus F. Jr. is minimization of M.D.F. and M.A.F. sexual victimization and his failure to understand their need for close supervision. JA at Vol. II, page 170, lines 12-22, page 286, lines 14-22, Vol. IV, page 638, lines 11–15. As stated earlier, Jesus F. Jr. had a history of unstable housing throughout the majority of M.D.F., M.A.F. and N.C.F.’s stay in foster care. Furthermore, the testimony supported the children’s need for line of sight supervision, particularly N.C.F. for safety. JA at Vol. II, page 211, lines 7–16, page 289, lines 16-17, Vol. III, page 356, lines 6–8, page 398, lines 11-12. The District Court evaluated Jesus F. Jr.’s ability to provide for their special needs, and noted that Jesus F. Jr. was not currently meeting the therapeutic needs of one of the children in the home, which led to a concern that he would not meet the special needs of the other 3 children in foster care. JA at Vol. IV, page 638, Furthermore, Ms. Osier-Tater testified as to M.D.F.’s need for a healthy attachment to a caregiver as soon as possible. JA at Vol. III, page 343, lines 6–8.

Jesus F. Jr. refers to the District Court’s Order as creating “legal orphans.” Appellant’s Opening Brief, page 15. A caseworker's testimony that children are adoptable is sufficient to support an adoptability finding, as a best interest factor

supporting termination of parental rights. Hamman v. Arkansas Dept. of Human Services, 2014 Ark. App. 295, 435 S.W.3d 495, 501 (Ark.App.,2014).

Furthermore, the Washington D.C. Court of Appeals in *In Re Tw.P.*, 756 A.2d 402, 411 (2000) rejected an appellant's argument that the lower Court erred in terminating their parental rights, as no adoptive home had been found for the child. The Court found that pursuant to D.C. Code § 16-2320(a)(6) and its own previous case law, it was authorized to terminate parental rights for the purpose of seeking an adoptive home for a child. See, Id. The Court also noted:

“The sad reality is that neither L.P. nor T.F. is able to provide stability for their children and, unless their parental rights are terminated, these children have virtually no chance of securing adoptive placements that could provide them with the permanence and stability they so desperately need. Where there is overwhelming evidence introduced that child's best interest will be served by his prompt integration into permanent and stable home, and no viable family placement is available, adoption is the preferred alternative, and because prospective adoptive parents are reluctant to consider an "at risk" adoption, where natural parent may oppose and contest adoption, termination of parental rights is critical to increasing chances of adoption and, consequently, to increasing likelihood that best interests of the children will ultimately be served.” Id.

Ms. Maurins testified on behalf of the Department, and asserted that the children’s primary barrier to adoption was that the parents rights were still intact. JA at Vol. III, page 411, lines 7-9. Ms. Maurins testified that these children were adoptable. all 3 children were adoptable. Furthermore Ms. Franklin testified that over 100

families had expressed interest in adopting M.D.F., M.A.F. and N.C.F. JA at Vol. III, page 454, lines 3-8. The District Court also found that Jesus F. Jr. presented no evidence that M.D.F. and M.A.F. would not be harmed emotionally or psychologically by sharing a home with the brother who sexually assaulted them, JA at Vol. IV, page 639, lines 1–3.

In the end analysis, the District Court evaluated the needs of the children for shelter, for physical, psychological and emotional safety, and for permanency, and then evaluated the credibility of Jesus F. Jr.'s testimony to rebut the presumption that termination of parental rights is in the children's best interest. JA at Vol. IV, page 638, lines 5–15. Jesus F. Jr. simply failed to provide testimony that he would be able to provide for the children's basic needs, their safety needs and their special needs. Therapeutically, these children need permanent home as quickly as possible and they have already spent 4 1/2 years in foster care. The District Court found that Jesus F. Jr. failed to provide sufficient evidence to show that their basic needs and their emotional and psychological safety needs would be met by Jesus F. Jr.. JA at Vol. IV, page 638, lines 5–11. The District Court's determination that termination of parental rights was in M.D.F., M.A.F. and N.C.F.'s best interests and that his testimony failed to rebut the best interest presumption was supported by substantial evidence.

IV. CONCLUSION

For the aforementioned reasons, Washoe County Department of Social Services respectfully requests the Court deny Petitioners appeal and affirm the District Court's ruling.

Dated this 29th day of June, 2015.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP32(a)(4), the typeface requirement of NRAP32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Times New Roman in 14 point font. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is proportionately spaced, has a typeface of 14 points or more, and contains 9893 words.

Finally, 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 this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), 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 record on appeal. 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 29th day of June, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on June 29, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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