

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
PARENTAL RIGHTS AS TO:

R.T.; K.G-T.; N.H-T.; and E.H-T.,

Minor Children,

JACQUELINE GUERRERO,

Appellant,

v.

WASHOE COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Respondent.

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Case No. 70210

District Court Case No. FV14-03897

ON APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

RESPONDENT'S SUPPLEMENTAL ANSWERING BRIEF

CHRISTOPHER J. HICKS
Washoe County District Attorney

By /s/ Tyler M. Elcano
TYLER M. ELCANO
Deputy District Attorney
Nevada State Bar No. 10578
P. O. Box 11130
Reno, NV 89520-0027
(775) 337-5700

ATTORNEYS FOR RESPONDENT

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I. ARGUMENT

This Supplemental Brief is filed pursuant to the Nevada Supreme Court's Order dated January 27, 2017, wherein the parties were ordered to provide supplemental briefing addressing the implication of the Nevada Revised Statutes ("NRS"), Sections 128.106 and 128.013, as well as In re Parental Rights as to Daniels, 114 Nev. 81, 953 P.2d 1 (1998)(overruled on other grounds), In re Parental Rights as to Bow, 113 Nev. 141, 930 P.2d 1128 (1997)(overruled on other grounds), and Cooley v. Div. of Child & Family Services of Nevada State Dept. of Human Res., 113 Nev. 1191, 946 P.2d 155 (1997)(overruled on other grounds), as to Appellant's claim that the District Court's decision terminating Ms. Guerrero's parental rights was based on her poverty. The factual statement as provided in the Respondent's Answering Brief is fully incorporated herein by reference thereto.

Ms. Guerrero's parental rights were not terminated because of poverty. This was expressly found by the District Court when rendering its order. I JA 138-150. The District Court found, "Ms. Guerrero ... falls short in each of the important areas required [to] be a parent." Id. Poverty is not "what has caused [Ms. Guerrero's] failure to do what is necessary to reunify with her children." Id.

Instead, Ms. Guerrero's parental rights were terminated because parental fault existed in accordance with NRS 128.105(1)(b). Id. Ms. Guerrero, despite receiving over two years of reasonable efforts to effectuate reunification failed to

address her severe emotional and mental illnesses, failed to obtain a stable employment (quit several jobs she obtained), failed to obtain stable residence (she lived in sixteen different residences over a two year period), continued to engage in relationships involving domestic violence, and failed to follow through with services which would enable the safe return of the children to her care and custody.

Id. Therefore, based upon Ms. Guerrero's unwillingness to follow through with the actions required for reunification, the District Court found parental fault and terminated her parental rights.

A. Pursuant To NRS 128.106, Ms. Guerrero Neglected R.T., K.G-T., N.G-T., And E.H-T. And Is An Unfit Parent Which Establishes Parental Fault Pursuant to NRS 128.105(1)(b).

NRS 128.106 provides in pertinent part:

1. In determining neglect by or unfitness of a parent, the court shall consider, without limitation, the following conditions which may diminish suitability as a parent:

(a) Emotional illness, mental illness or mental deficiency of the parent which renders the parent consistently unable to care for the immediate and continuing physical or psychological needs of the child for extended periods of time. The provisions contained in NRS 128.109 apply to the case if the child has been placed outside his or her home pursuant to chapter 432B of NRS.

(e) Repeated or continuous failure by the parent, although physically and financially able, to provide the child with adequate food, clothing, shelter, education or other care and control necessary for the child's physical, mental and emotional health and development, but a person who, legitimately practicing his or her religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent parent.

(h) Inability of appropriate public or private agencies to reunite the family despite reasonable efforts on the part of the agencies.

NRS 128.106(a): On January 3, 2015, Ms. Guerrero completed a psychological evaluation with Dr. Julius Rogina, a stipulated expert in the field of psychology. IV JA 903, 910; V SA 276-284. Dr. Rogina opined Ms. Guerrero was diagnosed with persistent depressive disorder with persistent major depressive episode, generalized anxiety disorder, panic disorder, unspecified neurocognitive disorder, and avoidant personality disorder. IV JA 921-922; V SA 276-284. Based upon the diagnoses, Dr. Rogina testified, Ms. Guerrero “suffers from severe mental illness” IV JA 922. Dr. Rogina defined a mental illness as “very debilitating ... they’re not able to function at the level that usually adults of that age and gender and socio economics status are functioning” IV JA 909. Further, a mental illness is debilitating to a person’s ability to take care of oneself, function in the community, and to take care of others. Id. Dr. Rogina opined this means Ms. Guerrero has difficulty “taking care of herself, she needs [the] support of others, she functions at a low level ...” and would have great difficult taking care of anybody else. IV JA 909, 919, 920.

Further, Dr. Rogina found Ms. Guerrero suffers from an emotional illness. IV JA 922-923. However, Dr. Rogina was unable to determine the severity of this emotional illness as Ms. Guerrero failed to return for her next appointment. Id.

Dr. Rogina recommended Ms. Guerrero complete a psychiatric and a parental capacity evaluation, and engage in individual counseling. IV JA 923; V

SA 283. Dr. Rogina also recommended dialectical behavioral therapy, group psychotherapy, and the “children should continue in foster care.” Id.

On February 27, 2015, Dr. Suzanne Aberasturi, an expert in psychology and neuropsychology, completed a psychological/neuropsychological evaluation for Ms. Guerrero. JA III 466; V SA 285-299. Based upon this evaluation, Dr. Aberasturi diagnosed Ms. Guerrero with generalized anxiety with panic attacks, obsessive-compulsive disorder, dependent personality disorder, attention deficit/hyperactivity disorder – predominately inattentive type, mild, and posttraumatic stress disorder. III JA 506, 507; V SA 285-299. Dr. Rogina opined those diagnoses were indicative of a “serious mental illness ...” and emotional illness. IV JA 936, 940.

Dr. Aberasturi concluded Ms. Guerrero “can be productive in work and in tasks;” however, Ms. Guerrero’s failure to engage in treatment and counseling has made it difficult for her to maintain employment.¹ III JA 534; IV JA 936, 940. Additionally, Ms. Guerrero “has significant issues being dependent on others” which causes her to seek other people to rely upon for help. III JA 506, 507, 510, 521; V SA 285-299.

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¹ Dr. Rogina testified Ms. Guerrero stated, “I have never developed a career. I always quit jobs I have.” IV JA 917; V SA 279.

Dr. Aberasturi concluded Ms. Guerrero would benefit from therapy, including dialectical behavioral therapy, and should be seen for medication therapy. III JA 511, 512, 513; V SA 285-299, 300-330. Dr. Aberasturi testified “I do believe [Ms. Guerrero] can understand tasks. She has average intelligence. She definitely could process information.” III JA 509. Dr. Aberasturi opined if Ms. Guerrero “had fully engaged in therapy ... I would be hopeful” she could overcome her diagnoses as her anxiety disorder is “treatable.” III JA 513, 552.

Washoe County Department of Social Services (“WCDSS”), in an effort to assist Ms. Guerrero with addressing her severe mental and emotional illnesses, secured and paid for Ms. Guerrero to see four different counselors over the course of the dependency case: Brianna Carter, Deken Gossett, Dori Orlich, and Amanda Buttacavoli. III JA 545, 546; IV JA 827, 829, 873; V JA 971, 973. Ms. Carter, Mr. Gossett, Ms. Orlich, and Ms. Buttacavoli each testified they had difficulty scheduling appointments with Ms. Guerrero, Ms. Guerrero failed to consistently attend her appointments, Ms. Guerrero was not engaged fully in therapy appointments she did attend, and Ms. Guerrero disengaged from counseling, despite additional counseling being recommended to address her outstanding mental and emotional illnesses. III JA 559-560, 837, 838, 841-843; IV JA 882, 883, 901; V JA 978, 979, 982-984.

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Clearly, this is not a case of poverty. Ms. Guerrero chose, to her own peril and that of her children, not to engage in counseling and psychiatric services to address her mental and emotional illnesses. Because Ms. Guerrero failed to address her severe mental health issues, her emotional and mental illnesses renders her consistently unable to care for the immediate and continuing physical or psychological needs of her children for extended periods of time as she cannot effectively care for herself, maintain a job, or provide for the basic needs of her children. Therefore, the neglect and unfitness of Ms. Guerrero are demonstrated pursuant to NRS 128.106(1)(a), and parental fault pursuant to NRS 128.105(1)(b)(2).

NRS 128.106(e): In June of 2013, while R.T., K.G-T., and N.G-T. were placed in the care of Ms. Guerrero, she received income from the Temporary Assistance for Needy Families (“TANF”), as well as from blood donation and odd jobs. II JA 295, 297, 339-340; III JA 614, 627; IV JA 775; VI JA 1318; I SA 1-54. Despite receiving that income, Ms. Guerrero failed to budget appropriately to meet the basic needs of the children. Id. R.T., K.G-T., and N.H-T. were removed from the care and custody of Ms. Guerrero while she was receiving such income as she failed to provide for the basic needs of the children. Id. Ms. Guerrero was also prohibited from receiving food stamps as she had committed food stamp fraud. III JA 628; VI JA 1276-1277, 1384.

Additionally, throughout the dependency case, Ms. Guerrero demonstrated an ability to obtain employment. III JA 626. Even when employed, Ms. Guerrero failed to budget money received to achieve stability. Id. Further, Ms. Guerrero repeatedly quit jobs obtained after working for several weeks. III JA 626. Dr. Aberaturi testified, Ms. Guerrero's unwillingness to address her severe emotional and mental illnesses impacted her ability to maintain employment. III JA 534; IV JA 936, 940.

Consequently, Ms. Guerrero demonstrated a continued failure to provide for the basic needs of her children when receiving consistent income. Thus, neglect and unfitness of Ms. Guerrero as a parent is further demonstrated pursuant to NRS 128.106(e) and parental fault pursuant to NRS 128.105(1)(b)(2).

NRS 128.106(h): To effectuate reunification, WCDSS created a case plan and service agreement ("CPSA") which identified the safety concerns, goals and objectives, and tasks and services associated with effectuating reunification. II SA 190-247. The CPSA was reviewed and updated every three months. Id. The identified goals and objectives in Ms. Guerrero's CPSA included: providing for the children's basic needs, obtaining safe and stable housing, obtaining income, addressing her lack of motivation, and addressing her severe mental and emotional illnesses. Id.

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The services offered to Ms. Guerrero by WCDSS and the Children's Cabinet to accomplish the goals and objectives in the CPSA included housing assistance (including referrals and assistance with Reno Housing Authority, Section 8 Housing, and the Low Income Housing Fund), budgeting assistance, bus passes, and provision of funds for temporary housing. II JA 349-350; III JA 611-612; V JA 998-1001, 1007-1010, 1015, 1020, 1023, 1185, 1186, 1190, 1192, 1198-1203, 1211; VI JA 1246, 1303, 1316; I SA 1-100. Also, assistance with resume creation and building services, the identification of job openings, and job application were provided to Ms. Guerrero. Id. Further, WCDSS provided gift cards, assistance with TANF, cleaning supplies, identified local charities to obtain food, clothing, and diapers, and provided furniture, including a pack-n-play to the family. Id. Moreover, WCDSS provided and paid for parenting classes, a psychosocial evaluation, individual counseling with four separate counselors, a psychological evaluation, a neuropsychological/psychological evaluation, dialectical behavioral counseling, and psychiatric assessment for Ms. Guerrero. Id. To ensure Ms. Guerrero understood tasks when communicating with her, the social workers verbally conveyed the tasks, wrote the task down for Ms. Guerrero, had Ms. Guerrero repeat the tasks back to them, and watched her write the tasks down on her calendar. III JA 644; V JA 1200.

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Despite the significant services and reasonable efforts offered to Ms. Guerrero throughout the dependency case, Ms. Guerrero failed to accomplish any of the goals/objectives identified in her CPSA which prevented the safe placement of the children with her. III JA 638, 676; VI JA 1275-1276. In fact, Ms. Guerrero:

- Chose not to follow through with counseling with 4 different providers secured and paid for by WCDSS;
- Chose to quit several jobs obtained after only a week or two of working;
- Chose not to drug test, attend interviews, or secure the necessary transportation for interviews to obtain employment;
- Chose to reside in at least sixteen different residences from September of 2013, up and to the termination trial;
- Failed to demonstrate an ability to budget appropriately despite receiving services for budgeting with Children's Cabinet;
- Chose not to follow through with obtaining an approved Section 8 Housing apartment despite receiving a voucher for housing to ensure she would receive affordable and appropriate housing for her children;
- Chose not to follow through with the necessary steps to receive financial assistance for housing from the Victims of Crime Act despite qualifying for such assistance;
- Chose not to provide the necessary documentation to obtain low-income energy assistance despite qualifying for such assistance;
- Chose to commit food stamp fraud preventing her and her children from receiving such benefits;
- Chose not to follow through with the recommendations received from Dr. Rogina and Dr. Aberasturi;
- Chose not to follow through with the requirements for enrollment with the Washoe County Mental Health Court;

- Chose not to maintain a clean and sanitary residence where her children could be safely placed; and
- Chose to engage in relationships which resulted in domestic violence and placed her children in danger.

II JA 338, 339, 400-406, 449, 450; III JA 613, 614, 616, 620, 628, 634, 635, 636, 643, 645, 648-649; IV 764, 773, 780-781; V JA 1187-1188, 1193, 1197, 1205, 1212-1213; VI JA 1274-1277, 1374, 1376-1379, 1380, 1384, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445; V SA 285-299.

This is not an issue of poverty. Instead, despite the provision of reasonable efforts, Ms. Guerrero's actions, or lack thereof, prevented WCDSS from safely returning her children back to her care and custody as the safety issues resulting in their removal still existed at the time of the termination trial. Thus, NRS 128.106(h) is applicable and demonstrates Ms. Guerrero's neglect of her children and unfitness as a parent, and parental fault pursuant to NRS 128.105(1)(b)(2).

B. Pursuant To NRS 128.013, Ms. Guerrero Has Injured The Health And Welfare of R.T., K.G-T., N.G-T., and E.H-T. Establishing Parental Fault Pursuant to NRS 128.105(1)(b).

NRS 128.013 provides in pertinent part:

1. "Injury" to a child's health or welfare occurs when the parent, guardian or custodian:

(c) Neglects or refuses to provide for the child proper or necessary subsistence, education or medical or surgical care, although he or she is financially able to do so or has been offered financial or other reasonable means to do so; or

(d) Fails, by specific acts or omissions, to provide the child with adequate care, supervision or guardianship under circumstances requiring the intervention of:

- (1) An agency which provides child welfare services; or
- (2) The juvenile or family court itself.

NRS 128.013(1)(c): As previously stated, WCDSS provided reasonable efforts to Ms. Guerrero to assist her in providing her children with proper or necessary subsistence, education or medical or surgical care². Again, despite the provision of those services, Ms. Guerrero chose not to effectively engage in and follow through with such services.³ Consequently, Ms. Guerrero failed to substantially comply with her CPSA and failed to address the safety concerns which prevented her from reunifying with her children. III JA 620; V JA 1193, 1197, 1212-1213; VI JA 1275-1276. Although Ms. Guerrero was unemployed, without stable residence, and unable to provide for the basic needs of her children, she refused to engage in and follow through with services to sufficiently address her severe emotional and mental health illnesses. III JA 616, 643, 676; VI JA 1275-1276; VII JA 1557. Even when Ms. Guerrero was receiving governmental benefits, she was unable to provide for the basic needs of her children. II JA 290, 292, 295, 294, 339-340.

As a result, NRS 128.013(1)(c) is applicable as Ms. Guerrero caused injury to her children's health and welfare by neglecting or refusing to provide them with proper or necessary subsistence, education or medical or surgical care despite

² See pages 8-9.

³ See pages 9-10.

being financially able to do so or having been offered financial or other reasonable means to do by WCDSS.

NRS 128.013(1)(d): This case clearly required the intervention of WCDSS, an agency which provides child welfare services, as well as the family court. Specifically, pursuant to NRS 432B.470, a protective custody hearing was conducted on April 24, 2013, as to R.T., K.G-T., and N.G-T. I SA 1. The District Court found continuation in the home was contrary to the welfare of R.T., K.G-T., and N.G-T., and it was in their best interest to be placed outside of their home due to Ms. Guerrero's failure to provide adequate shelter and the educational neglect of R.T. (R.T. had missed in excess of forty-five (45) days of school and presented with untreated speech and language delays). II JA 279, 290, 337; I SA 1.

Subsequently, on June 20, 2013, the dependency court found R.T., K.G-T., and N.G-T. were children in need of protection pursuant to NRS 432B.330(2)(b) as Ms. Guerrero, a person responsible for the welfare of the children, failed, although financially able to do so or had been offered financial or other means to do so, to provide for the needs of the children. I SA 9-10.

Likewise, on September 16, 2014, a contested protective custody hearing occurred pursuant to NRS 432B.470. I SA 55-100. At the hearing, the District Court found continuation in the home was contrary to the welfare of E.H-T. and it was in his best interest to remain outside of the home due to the unsafe and

unsanitary condition of Ms. Guerrero's residence, the unaddressed mental health of Ms. Guerrero, and Ms. Guerrero's failure to meet the basic needs of E.H-T. Id.

Subsequently, on November 13, 2014, Ms. Guerrero was found to be a person responsible for the welfare of E.H-T. and to have subjected him to neglect in accordance with NRS 432B.330(1)(b). Id. Accordingly, NRS 128.013(1)(d) is applicable as Ms. Guerrero failed, by her specific acts and omissions, to provide the children with adequate care, supervision or guardianship under circumstances clearly requiring the intervention of WCDSS and the dependency court. Thus, injury to R.T., K.G-T., N.G-T., and E.H-T by Ms. Guerrero is established.

The District Court found in its termination ruling if the children were returned to Ms. Guerrero's care, "[t]he children would be at an increased and untenable risk of re-removal" I JA 149. Because injury is established pursuant to NRS 128.013(d), if R.T., K.G-T., N.G-T., and E.H-T., were returned to the care and custody of Ms. Guerrero, they would be at risk of serious injury, establishing parental fault pursuant to NRS 128.105(1)(b)(5) and (1)(b)(6)(IV).

C. Similar To In re Daniels, The District Court Correctly Found WCDSS Provided Ms. Guerrero With Reasonable Efforts, Ms. Guerrero Failed To Make Any Progress On Her CPSA Despite, And Termination Is In The Best Interests Of The Children.

In the In re Daniels matter, the district court terminated the parental rights of the parents to five children and the parents appealed. In Daniels, 114 Nev. 81, 953 P.2d 1. The Supreme Court of Nevada affirmed the termination. Id.

The Court found the Division of Child and Family Services (“DCFS”) made reasonable reunification efforts. Id. 114 Nev. 83, 91, 953 P.2d 1, 7. The Court specifically ruled the father’s assertion that reasonable efforts were not provided were without merit as he repeatedly failed to make any progress on his case plan, despite receiving two years of services. Id.

The Court relied upon NRS 128.109(b), which provides, “[i]f the parent or parents fail to comply substantially with the terms and conditions of a plan to reunite the family within 6 months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment as set forth in paragraph (4) of paragraph (b) of subsection 1 of NRS 128.105.” Despite that statutory provision, DCFS continued to provide reasonable efforts after 6 months of noncompliance had occurred. In re Daniels, 114 Nev. 81, 91, 953 P.2d 1, 7. Thus, the father’s “attempt to shift his personal accountability and responsibility to DCFS is meritless, and therefore, unavailing.” Id.

Here, the evidence presented and the findings of the District Court demonstrated more than reasonable efforts were provided to Ms. Guerrero to effectuate reunification.⁴ II JA 338, 339; III JA 616; V JA 1187-1188; VI JA 1374, 1376-1379, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445. Likewise, the

⁴ See pages 8-9.

dependency court found on October 17, 2013, April 17, 2014, January 15, 2015, and May 21, 2015, that WCDSS had provided reasonable efforts to reunify R.T., K.G-T., N.H-T., and E.H-T. with Ms. Guerrero. I SA 1-100. When Ms. Guerrero was asked at trial what additional services could be provided to her to effectuate reunification, she failed to identify any services which had not previously been provided to her by WCDSS. VII JA 1536-1538. Additionally, not only did Ms. Guerrero receive reunification services from WCDSS, but she also received services and the assistance of another worker from the Children's Cabinet. III JA 594.

Despite the provision of reasonable efforts over a two year period, Ms. Guerrero failed to comply with her CPSA and the issues identified at the time of removal were still in existence at the termination trial. III JA 620; V JA 1193, 1197, 1212-1213; VI JA 1275-1276. Ms. Guerrero had no source of income, no residence at which the children could be placed, and was not engaging in services to address her mental and emotional illnesses. III JA 616, 643, 676; VI JA 1275-1276; VII JA 1557. Likewise, Ms. Guerrero failed to demonstrate an ability to follow through with any services provided to effectuate successful reunification. III JA 449, 450; IV JA 883. In fact, the District Court emphasized that Ms. Guerrero's lack of follow through and her failure and unwillingness to achieve

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even the minimal level required to care for her children resulted in the termination.
I JA 138-150.

Thus, analogous to In re Daniels, Ms. Guerrero's attempt to shift her personal accountability and responsibility to follow through with services provided by WCDSS is meritless and unavailing. Like in In re Daniels, WCDSS, the same as DCFS, provided services to Ms. Guerrero for over two years, which is evidence of failure of parental adjustment pursuant to NRS 128.105. Consequently, Ms. Guerrero was provided more than reasonable efforts to effectuate reunification and had more than ample opportunity to utilize of those services, but, simply put, chose not to do so at the cost of reunification. Therefore, parental fault pursuant to NRS 128.105 is established.

Next, In re Daniels the Nevada Supreme Court determined the district court established jurisdiction and dispositional grounds to terminate parental rights by clear and convincing evidence. Id., 114 Nev. 81, 92, 953 P.2d 1, 4. The Court emphasized termination "requires a finding of parental unsuitability (jurisdictional grounds) and that severing the parental ties would be in the child's best interest (dispositional grounds)." Id. 114 Nev. 81, 92, 953 P.2d 1, 5; (*citing Champagne v. Welfare Division*, 100 Nev. 640, 647, 691 P.2d 849, 854 (1984)). Jurisdictional

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grounds were established as the parents abandoned⁵ their children and failed to demonstrate parental adjustment. Id. 114 Nev. 81, 93, 953 P.2d 1, 9. Specifically, the Court ruled both parents failed to comply with their case plan and service agreements, took actions which placed their children's safety in jeopardy, and failed to take full advantage of services provided for reunification. Id.

In the present matter, Ms. Guerrero failed to adjust to enable reunification pursuant to NRS 128.105(1)(b)(4) and NRS 128.109(1)(b). Like the parents in In re Daniels, Ms. Guerrero failed to comply and follow through with services identified in her CPSA. III JA 620; V JA 1193, 1197, 1212-1213; VI JA 1275-1276. Ms. Guerrero's failure placed her children's safety in jeopardy. Id. Specifically, Ms. Guerrero's choice to quit jobs obtained, commit food stamp fraud, and not follow through with obtaining Section 8 housing or VOCA assistance despite qualifying, placed her children's safety in jeopardy. Id.; III JA 627, 628; VI JA 1275-1277, 1384. Moreover, Ms. Guerrero's choice to not address her outstanding mental health conditions prevented her from maintaining a job and safely caring for her children. II JA 559-560, 837, 838, 841-843; IV JA 882, 883, 901; V JA 978, 979, 982-984.

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⁵ Abandonment was not a basis for parental fault in this case, and, therefore, will not be addressed.

As found by the District Court, this is not a case of poverty; rather, this is a case where Ms. Guerrero's choices thwarted reunification. Therefore, akin to In re Daniels, a basis for establishing failure of parental adjustment pursuant to NRS 128.105(1)(b)(4) and NRS 128.109(1)(b) exists here.

Finally, the Court ruled the best interests of the children would be served by the termination of parental rights. Id. 114 Nev. 81, 94, 953 P.2d 1, 9. The Court specifically stated, "[t]he record clearly portrays dysfunctional parents ill-equipped to deal with their children's special needs" and that the parents have displayed "deficient efforts" for reunification. Id.

Here, Ms. Guerrero demonstrated deficient efforts for reunification as she did not followed through with reunification services.⁶ Additionally, based upon her actions, or omissions, Ms. Guerrero is ill equipped to care for her children as she cannot provide a stable home, food, or clothing, and was not employed at the time of their removal. III JA 620; V JA 1193, 1197, 1212-1213; VI JA 1275-1276. Moreover, Ms. Guerrero dysfunction and failure to address her own mental health needs demonstrates she is ill-equipped to address the therapeutic needs (R.T. came into care with untreated speech delays) of her own children and ensure the children attend therapy. V JA 1093, 1101.

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⁶ See pages 8-9.

This is not a case where the children were ripped from a poor family and placed in a more affluent home; rather, this is a case where Ms. Guerrero was unwilling to take the necessary steps to reunify with her children.⁷ The children are placed in an adoptive home where the family resides in a mobile home with three bedrooms shared between six children and one adult; clearly not a case of a more affluent home. IV JA 956, 957. The children are thriving in this home where all of their needs are met. III JA 696, 697, 698; IV JA 961-963; V JA 1091-1092, 1218-1219. Thus, it is clearly in their best interests that Ms. Guerrero's parental rights are terminated.

D. Similar To In re Bow, The District Court Correctly Found Lack Of Parental Adjustment And Parental Fault And Termination Is In The Best Interests Of These Children.

In the In re Bow case, the district court ordered the termination of an indigent mother's parental rights and the mother appealed. 113 Nev. 141, 930 P.2d 128 (1997). The Nevada Supreme Court held the mother's failure to comply with her case plan which required her to maintain steady employment, housing, and visitation was clear and convincing evidence of unfitness of a parent and failure of parental adjustment. Id. Also, the Court concluded testimony that the child was thriving in a foster home and the foster parents desired to adopt the child was clear and convincing evidence that termination was in the best interest of the child. Id.

⁷ See pages 9-10.

The Court held jurisdictional grounds (parental fault) and dispositional grounds (best interest) must be proven by clear and convincing evidence. Id. 113 Nev. 141, 148, 930 P.2d 1128, 1132-1133 (*citing Champagne*, 100 Nev. 640, 645, 691 P.2d 849, 853).

The Court ruled parental fault was established pursuant to NRS 128.105(1)(b)(3) and NRS 128.105(1)(b)(4). Id. 113 Nev. 141, 148, 930 P.2d 1128, 1133. Pursuant to NRS 128.018, an “unfit parent” is defined as “any parent of a child who, by reason of his fault or habit or conduct toward the child or other person, fails to provide such child with proper care, guidance and support.” Id. A parent only deserves to have his parental rights terminated if “such unfitness is shown to be severe and persistent and such as to render the parent *unsuitable* to maintain the parental relationship.” Id. (*citing Champagne*, 100 Nev. at 648, 691 P.2d at 855). An unsuitable parent is one “who by reason of persistent fault or state of incapacity deserves to have his or her parental rights terminated or who must sacrifice such parental rights in the interest of the child by reason of irremedial inability to function as a proper and acceptable parent.” Id. 113 Nev. 141, 148-149, 930 P.2d 1128, 1133 (*citing Champagne*, 100 Nev. 640, 648, 691 P.2d 849, 855). Pursuant to NRS 128.106(6)⁸, a condition which diminishes the suitability of a parent is the “inability of appropriate public or private agencies to

⁸ Updated statutory reference is NRS 128.106(h).

reunify the family despite reasonable efforts” by the agency. In re Bow, 113 Nev. 141, 148-149, 930 P.2d 1128, 1133.

The Court concluded that clear and convincing evidence of unfitness existed as DCFS made reasonable efforts, provided the mother with child care so the mother could find housing, employment, and establish stability. Id. Despite the fact that the mother “was relieved of the obligations of care for” her son, the mother still “did nothing to help establish stability in her life” which was essential to safely care for and reunify with her son. Id. Such evidence established an irreparable inability to function as a proper and acceptable parent. Id.

In regards to parental adjustment, pursuant to NRS 128.105(1)(b)(4), the Court referenced NRS 128.109(1)(b) which allows for a finding of failure of parental adjustment if a parent fails to substantially comply with “the terms and condition of a plan to reunite the family within 6 months after the date on which the child was placed or the plan was commenced, whichever occurs later.” Id.

The Court held the evidence shows, because the mother was given well over one year to “adjust and provide a suitable and stable environment” for her child, she demonstrated an “overarching and uncorrected problem” of chronic instability in her employment and housing. Id. The mother demonstrated an inability to maintain steady employment (she had three jobs and two ended due to her volatility) or stable housing. Id. Thus, over one and one-half years was a

substantial amount of time to keep a child in suspense while his mother tried to adjust. No evidence indicated with any certainty that additional services would bring about last parental adjustment enabling the safe return of the child to the mother. Id. Thus, jurisdictional grounds were established.

Analogous In re Bow, here, WCDSS provided Ms. Guerrero with reasonable efforts to effectuate reunification.⁹ Despite receiving those efforts and “being relieved of the obligation” to care for and provide for her four children in excess of two years, Ms. Guerrero failed to obtain stable employment and stable housing. III JA 620; V JA 1193, 1197, 1212-1213; VI JA 1275-1276. Rather, Ms. Guerrero chose not to follow through with and address her severe emotional and mental illnesses, failed to maintain employment despite obtaining jobs, and lived in at least sixteen different residences over a two year period. II JA 338, 339; III JA 616; V JA 1187-1188; VI JA 1374, 1376-1379, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445. Further, Ms. Guerrero failed to comply with her case plan and service agreement over more than two years, evoking the application of NRS 128.109(1)(4). Like the mother in In re Bow, Ms. Guerrero demonstrated an unwillingness to “adjust and provide a suitable and stable environment” for her children and an “overarching and uncorrected problem” of chronic instability in her employment and housing. Clearly, as in In re Bow, this evidence establishes

⁹ See pages 8-9.

Ms. Guerrero's irremedial unwillingness to function as a proper and acceptable parent pursuant to NRS 128.105(1)(b)(3) and NRS 128.105(1)(b)(4) and the existence of parental fault or jurisdictional grounds.

In regards to procedural or best interest grounds, the Court considered the fact that the child was placed in his foster home for more than one year and the foster family was willing to adopt the child. In re Bow, 113 Nev. 141, 150, 930 P.2d 1128, 1134. The Court further considered that the foster parents have strong parenting skills, the foster family has incorporated the child into their family, the child recognizes the foster parents as Mom and Dad, and the child feels he is a part of that family. Id. Therefore, based upon these facts, the Court held it was in the child's best interest that the mother's parental rights were terminated. Id.

Similarly, here, R.T., K.G-T., and N.G-T. were placed in foster care with Sandra Matute ("Ms. Matute") in May of 2013, and were still placed there at the time of the termination trial in August of 2015. III JA 598, 694; VI JA 957. Ms. Matute opened her home to E.H-T. in September of 2014, shortly after his birth, to ensure all siblings were placed in the same home. IV JA 960; V JA 1177. Ms. Matute wishes to adopt all four children and has been identified by WCDSS as their adoptive placement. III JA 694; V JA 1102. Similar to In re Bow, all four children are, pursuant to the District Court's findings, flourishing "in their potential adoptive placement. Family bonds are developing and they are demonstrating an

abiding sense of safety, consistency, bonding and attachment.” I JA 149; III JA 598, 694; IV JA 960; V JA 1102, 1177. Ms. Matute, ensures the three oldest children attend therapy and that their educational needs are met, which Ms. Guerrero was unwilling to do. V JA 1093, 1101. Further, Ms. Matute loves these children and R.T., K.G-T., N.H-T., and E.H-T. have demonstrated their love for Ms. Matute by being affectionate, calling her mom, and verbally expressing their love and gratitude. III JA 699-700; V JA 1094. R.T., K.G-T., N.G-T., and E.H-T. are also bonded with Ms. Matute’s two sons and treat each other like siblings. V JA 1094. The evidence showed Ms. Matute provides these children with the consistency and structure they desperately need and which Ms. Guerrero is unwilling to provide. Thus, termination, like In re Bow, is in the best interest of R.T., K.G-T., N.G-T., and E.H-T. in accordance with to NRS 128.105(1)(a).

E. Similar To Cooley, The District Court Correctly Found Parental Fault And Termination Is In The Best Interests Of The Children Pursuant To Ms. Guerrero’s Failure To Follow Through With Her CPSA And The Stability Provided In Their Current Adoptive Home.

In the In re Cooley case, the lower court terminated the parental rights of a teenage mother who appealed. Cooley, 113 Nev. 1191, 946 P.2d 155 (1997). The Nevada Supreme Court ruled grounds of abuse, neglect, failure of parental adjustment, and only token efforts to comply with the case plan demonstrated

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parental fault and the best interest prong was supported as the child was confused and distressed due to the mother's immaturity, selfishness, and indifference. Id.

Again, the Court emphasized termination of parental rights requires the establishment of jurisdiction and dispositional grounds. Id. 113 Nev. 1191, 1197, 946 P.2d 155, 158. When considering jurisdictional grounds, the Court concluded the district court properly found parental fault based upon NRS 128.105(1)(b)(1), (2), (3), (4), (5), and (6). Id. Specifically, in regards to abuse and neglect, the Court ruled the mother failed to contest whether abuse or neglect occurred while the child was in her care and custody, and, thus, such parental fault grounds were established. Id. 113 Nev. 1191, 1196, 946 P.2d 155, 159.

In regards to failure of parental adjustment, the Court held the mother's failure to accomplish any goals identified in her homemaking contracts or case plan and her failure to follow through on any tasks DCFS provided her assistance with was sufficient to establish failure of parental adjustment pursuant to NRS 128.105(1)(b)(3). Id.

The mother argued reasonable efforts were not provided by DCFS. Id. However, the Court relied upon testimony provided by the social workers which established sufficient efforts were provided to help the mother. Id. 113 Nev. 1191, 1198, 946 P.2d 155, 158. The testimony further established the mother has a short

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attention span and never finished anything she started. Id. Accordingly, the Court held jurisdictional grounds were established. Id.

In the present matter, similar to the Cooley case, absolutely no evidence was provided to dispute the neglect finding pursuant to NRS 128.105(1)(b)(2). Thus, the neglect finding should be affirmed.

Akin to the mother in the Cooley case, Ms. Guerrero failed to accomplish any of the goals in her case plan and service agreement and failed to follow through with any tasks which WCDSS provided assistance.¹⁰ Therefore, as in Cooley, failure of parental adjustment is established here pursuant to NRS 128.105(1)(b)(3).

Finally, there is no basis for an argument that WCDSS did not provide reasonable efforts to Ms. Guerrero to effectuate reunification. The District Court found reasonable efforts were provided.¹¹ Moreover, Ms. Guerrero was provided with over two years to effectuate reunification and failed to do so. Id.

Thus, as specifically found by the District Court, poverty is not “what has caused [Ms. Guerrero’s] failure to do what is necessary to reunify with her children.” I JA 138-150. Ms. Guerrero’s parental rights were terminated due to her parental fault pursuant to NRS 128.105(1)(b) and her choice not to take the necessary steps to safely reunify with her children.

¹⁰ See pages 8-9.

¹¹ See pages 8-9.

F. The Dissents Provided By Justice Springer Are Inapplicable To This Case As They Are Based Upon Generalizations Regarding Other Cases, Were Not Adopted By The Majority, And Are Distinguishable As Demonstrated By Justice Shearing's Concurring Opinion In The Case In re Bow.

In each case referenced by the Court, Justice Springer provides a dissenting opinion arguing an epidemic of termination cases where parental rights are terminated based solely upon poverty or handicap. In re Daniels, 114 Nev. 81, 96-97, 953 P.2d 1, 9; In re Bow, 113 Nev. 141, 153-157, 9930 P.2d 1128, 1135-1138; Cooley, 113 Nev. 1191, 1200-1204, 946 P.2d 155-163. These dissenting opinions were not adopted by the majority and reflect Justice Springer's personal opinion and generalizations regarding other cases with different facts, in other jurisdiction, and have no applicability to the case presently before the Court.

In the In re Bow, 113 Nev. 141, 151-153, 9930 P.2d 1128, 1134-1135, Justice Shearing provides a concurring opinion specifically addressing the arguments provided by Justice Springer. Therein, Justice Shearing emphasizes "in each case affirmed by this court, the parental rights were terminated because the parent or parents irrefutably demonstrated their inability to care for their children" not for poverty." Id. Moreover, "[t]here is nothing arbitrary about a standard for termination that incorporates consideration of a parent's acts and failure to act." Id.

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The mother in In re Bow, did not follow through with the services offered to her by DCFS. Id. While it is true that the mother was “poor at the time of termination ... it appears she squandered several opportunities given to her to escape poverty.” Id. The mother lost three jobs due to her volatile actions and was indicted for bank fraud. Id. It was further noted, “[h]er three-year-old son also deserves some sympathy for the instability in his life due to his mother’s actions. He deserves a stable loving home and parents who are willing to provide him with care and guidance, which his mother is apparently unable or unwilling to supply.” Id. Justice Shearing continued,

There is not one iota of evidence that the State is simply plucking children of poor homes and placing them in ‘more affluent’ homes, which are more pleasing to social service agents.’ Rather, the evidence shows that the State attempts to place children with foster parents who are responsible, loving and caring, and my observation is that those who are willing and eager to adopt these already-troubled children demonstrate that they are indeed loving and caring. I have never observed that affluence is involved in any way.

Justice Shearing concludes by stating “termination shows compassion to children by not condemning them to live with abusive and neglectful parents and thereby preventing their growing up to repeat the cycle of violence and neglect with their own children ... [b]y terminating parental rights in appropriate cases, I hope that we are in the process of breaking the pattern by providing safe, loving homes to the children who are tomorrow’ parents.” Id. 113 Nev. 141, 153, 930 P.2d 1128, 1134.

As demonstrated by the evidence presented and found by the District Court, this is not a case where Ms. Guerrero's parental rights were terminated because of her poverty. Ms. Guerrero's parental rights were terminated due to her failure to care and provide for her children and for her continued lack of follow through. Ms. Guerrero failed to address her severe emotional and mental health illnesses at the cost of reunification and being able to appropriately care for her children. Ms. Guerrero "squandered several opportunities given to her to escape poverty" including failing to follow through with mental health services, failing to utilize Section 8 Housing, VOCA housing assistance, and low income energy assistance, quitting jobs, and choosing to commit food stamp fraud at the peril of her children. Ms. Guerrero's lack of action and choice to not follow through with the steps necessary to reunify with her children caused this termination – not poverty.

These children have waited for three years for permanency and to be adopted by a woman they recognize as their mother and by a family they recognize as their own for three years. These children, like the child in In re Bow, "deserve some sympathy for the instability in" their life due to their mother's actions or inactions. In addition, the children, like the child in the In re Bow case, "deserve a stable loving home and parents who are willing to provide" for them "with care and guidance," which their mother "is apparently unable or unwilling to supply."

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Thus, the District Court's ruling establishing parental fault and best interest pursuant to NRS 128.105 should be affirmed in its entirety.

II. CONCLUSION

The District Court's ruling was well supported by statutory, federal, and case law authority. When this Honorable Court reviews the entire record of this case, it will find the record contains substantial evidence to support the District Court's findings that parental fault grounds exist, as well as substantial evidence supporting a finding that it is in the best interest of R.T., K.G-T., N.H-T., and E.H-T. to terminate Ms. Guerrero's parental rights. Thus, Respondent respectfully requests this Honorable Court affirm the District Court's ruling in its entirety and uphold the termination of Ms. Guerrero's parental right to ensure the best interests of R.T., K.G-T., N.H-T., and E.H-T. will continue to be served.

Dated this 27th day of February, 2017.

CHRISTOPHER J. HICKS
Washoe County District Attorney

By /s/ Tyler M. Elcano
TYLER M. ELCANO
Deputy District Attorney
Nevada State Bar No. 10578
P. O. Box 11130
Reno, NV 89520-0027
(775) 337-5700

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14.

2. I further certify that this brief complies with the page 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 7093 words.

3. Finally, I hereby certify that I have read this supplemental 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)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be

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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 27th day of February, 2017.

CHRISTOPHER J. HICKS
Washoe County District Attorney

By /s/ Tyler M. Elcano
TYLER M. ELCANO
Deputy District Attorney
Nevada State Bar No. 10578
P. O. Box 11130
Reno, NV 89520-0027
(775) 337-5700

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

Pursuant to NRAP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years, and not a party to nor interested in the within action. I certify that on this date, the foregoing was electronically filed with the Supreme Court of the State of Nevada by using the ECF System. Electronic service of the foregoing document shall be made in accordance with the Court's service list as follows:

John Reese Petty
Chief Deputy Public Defender

Dated this 27th day February, 2017.

/s/ C. Mendoza
C. Mendoza