

1  
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3  
4 IN THE MATTER OF THE PARENTAL  
5 RIGHTS AS TO S. L.; N. R. B.; H. R. B.  
6 AND W. C. B.

NO. 71873

Electronically Filed  
Nov 16 2017 04:31 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

7 DONALD B.,  
8 Appellant,  
9 vs.

10 STATE OF NEVADA DEPARTMENT  
11 OF FAMILY SERVICES; S. L.; N. R. B.;  
12 H. R. B.; AND W. C. B., MINORS,  
13 Respondents.

14 IN THE MATTER OF THE PARENTAL  
15 RIGHTS AS TO S. L.; N. R. B.; H. R. B.  
16 AND W. C. B.

NO. 71889

17 MELISSA L.,  
18 Appellant,  
19 vs.

20 STATE OF NEVADA DEPARTMENT  
21 OF FAMILY SERVICES; S. L.; N. R. B.;  
22 H. R. B.; AND W. C. B., MINORS,  
23 Respondents.

24 **APPELLANTS' JOINT REPLY BRIEF**

TURCO & DRASKOVICH, LLP

LAW OFFICES OF MICHAEL I.  
GOWDEY

ROBERT M. DRASKOVICH, ESQ.  
Nevada Bar No. 6275  
815 S. Casino Center Boulevard  
Las Vegas, NV 89101  
Telephone: (702) 474-4222  
Attorney for Appellant Donald B.

MICHAEL I. GOWDEY, ESQ.  
Nevada Bar No. 6994  
815 S. Casino Center Boulevard  
Las Vegas, NV 89101  
Telephone: (702) 471-0321  
Attorney for Appellant Melissa L.

**TABLE OF CONTENTS**

	Page
I. TABLE OF CONTENTS.....	i
II. TABLE OF AUTHORITIES.....	ii
III. REBUTTAL ARGUMENT AND ANALYSIS.....	1
IV. CONCLUSION.....	4
V. CERTIFICATE OF COMPLIANCE.....	5
VI. CERTIFICATE OF SERVICE.....	6

**TABLE OF AUTHORITIES**  
**Case Authority**

**Page(s)**

**CASES**

Matter of A.D.L., 402 P.3d 1280 (Nev., 2017).....2,3,4

**Statutory and Rule Authority**

**STATUTE**

NRS 128.109.....3,4

1           **I.     ARGUMENT**

2           **A.     THE DISTRICT COURT ABUSED ITS DISCRETION WHEN**  
3           **IT TERMINATED DONALD B. AND MELISSA L.'S**  
4           **PARENTAL RIGHTS FOR FAILURE TO ADMIT TO THE**  
5           **ABUSE.**

6           The State's Opening Brief claims that Appellants' Fifth Amendment right  
7 of self-incrimination was protected by a stipulation from the State that neither  
8 their plea to the abuse petition or any statements made to treatment providers  
9 could be used against them in the corresponding criminal matter. (Resp. Opening  
10 Brief at pg. 37). However, the State's argument is misguided because, as stated in  
11 Appellants' Opening Brief, while the State stipulated that any statements made by  
12 the parents to treatment providers while addressing the abuse would not be used  
13 against them in the pending criminal. (AA 1439:17-18). The State's stipulation  
14 was not reduced to writing and not applicable to DFS as testified by Ms. Tallent at  
15 trial. (AA 1392:9-24; 1393:1-7; 977:20-24; 978:1-2). Nothing would stop Ms.  
16 Tallent or DFS from testifying and presenting admissions made by Appellants'  
17 regarding the alleged abuse to S.L. The State further argues that Appellants were  
18 not compelled to testify against themselves but were merely required to address  
19 the issue of abuse with a therapist for reunification. (Resp. Opening Brief at pg.  
20 40). The fact that Appellants were required to admit abuse in order to complete  
21 their reunification plan and reunification was denied because they would not  
22 admit clearly violates their Fifth Amendment privilege against self-incrimination.  
23  
24

1 The State tried to compel Appellants to incriminate themselves by requiring them  
2 to admit abuse to a therapist.

3           Recently, the Nevada Supreme Court decided this issue in the Matter  
4 of A.D.L., 133 Nev., Advance Opinion 72, 402 P.3d 1280 (October 5, 2017). In  
5 the Matter of A.D.L., the appellant, the mother, appealed the lower court's  
6 decision terminating her parental rights because the appellant would not admit to  
7 the abuse of the child. *Id.* at 1282. Based on photographs of the child's injuries, the  
8 injury was deemed non-accidental and the child was taken from the appellant. *Id.*  
9 at 1283. As a part of the appellant's case plan to reunify with her children, the  
10 appellant was required to complete counselling and admit to the abuse. *Id.* A  
11 month after giving the appellant the case plan, the State recommended termination  
12 of her parental rights. *Id.* The appellant completed her parenting classes,  
13 maintained housing, held regular jobs, and completed both her assessment and  
14 therapy., but despite completing all of the requirements, the State recommended  
15 termination of her parental for failing to admit to the abuse. *Id.* At trial, the  
16 appellant's therapist testified that the appellant's demeanor had changed  
17 substantially and she was at a low risk to reoffend. *Id.* at 1284. At the conclusion  
18 of the trial, the district court terminated the appellant's parental rights based on  
19 token efforts, failure of parental adjustment, and unfitness. *Id.* The district further  
20 found that termination was in the best interests of the children. *Id.* On appeal, this  
21  
22  
23  
24

1 Court concluded that the district court abused its discretion in concluding that  
2 termination of the appellant's parental rights was in the best interests of the  
3 children. *Id.* at 1287. This Court also concluded that the district court abused its  
4 discretion when it found that the appellant did not rebut the presumptions in NRS  
5 128.109(1)(a) and (b) by a preponderance of the evidence. This Court further  
6 concluded that the district court based its findings squarely on the fact that the  
7 appellant refused to admit that she caused the child's injury, which was a violation  
8 of the appellant's Fifth amendment rights. *Id.* at 1288.

9  
10 Similar to the appellant in the Matter of A.D.L., Donald B. and Melissa L.  
11 completed all requirements of their case plan to reunify with their children with  
12 the exception of admitting to the abuse. However, based on this Court's conclusion  
13 in the Matter of A.D.L., the admission of the abuse as a pre-requisite to  
14 reunification is a violation of Donald B. and Melissa L.'s Fifth Amendment rights.  
15 Like in the Matter of A. D.L., the district court abused its discretion in this case,  
16 by finding that Donald B. and Melissa L. had not rebutted NRS 128.109's  
17 presumptions by a preponderance of the evidence when Donald B.'s therapist, Dr.  
18 Gennis, testified that it was in the best interests of children to be reunified with  
19 their parents. (AA 1208:17-24; 1209:1-19). Dr. Gennis assessed Donald B. at a  
20 low risk to reoffend. (AA 1209:1-19). Dr. Gennis had never worked with parents  
21 who were as invested in terms of reunifying with their children and following  
22  
23  
24

1 through with what has been asked of them and more. (AA 1209:1-19).  
2 Accordingly, there was sufficient evidence presented at trial by Donald B. and  
3 Melissa L. to rebut the presumptions of NRS 128.109. The fact that the children  
4 have joined Donald B. and Melissa L's Opening Brief, indicates that they still  
5 prefer reunification with Donald B. and Melissa L. even after being separated  
6 from them for over three (3) years. Therefore, this Court should reverse and find,  
7 like in the Matter of A.D.L., that the district court abused its discretion in  
8 terminating Donald B. and Melissa L.'s parental rights.  
9

### 10 **CONCLUSION**

11 For the reasons set forth herein, it is respectfully prayed that this Honorable  
12 Court reverse the District Court's decision terminating Appellants' parental rights.  
13

### 14 **Disclosure Statement**

15 The undersigned counsel of record certifies that the following are person  
16 and entities as described in NRAP 26.1(a) and must be disclosed. These  
17 representations are made in order that the judges of this court may evaluate  
18 possible disqualification or recusal.  
19

### 20 **Routing Statement**

21 Appellants reaffirm that this appeal is presumptively retained by the Nevada  
22 Supreme Court because it case involving the termination of parental rights  
23 pursuant to NRAP 17(a)(12).  
24

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4

- DATED this **16th** day of **November, 2017**.

By \_\_\_\_\_  
 ROBERT M. DRASKOVICH, ESQ.  
 Nevada Bar No. 6275  
 TURCO & DRASKOVICH, LLP  
 MICHAEL I. GOWDEY, ESQ.  
 Nevada Bar No. 6994  
 815 S. Casino Center Boulevard  
 Las Vegas, NV 89101  
 Attorneys for Appellants



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

MORRIS ANDERSON  
LAUREN CALVERT, ESQ.

On behalf of TURCO & DRASKOVICH, LLP