

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO: T.L., A MINOR CHILD,

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No. 72563
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TONYA MEREDITH,
Appellant,

vs.

WASHOE COUNTY DEPARTMENT OF
SOCIAL SERVICES,
Respondent.

Appeal from an Order Terminating Parental Rights in FV15-03927
The Second Judicial District Court of the State of Nevada
Honorable Egan Walker, District Judge, Family Division

APPELLANT'S OPENING BRIEF

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I. STATEMENT OF JURISDICTION

This Court possesses appellate jurisdiction pursuant to Rules 3A(b)(1) and 4(a)(1) of the Nevada Rules of Appellate Procedure.

On January 30, 2017, family district court judge Egan Walker filed an order terminating Tonya Meredith's (Ms. Meredith) parental rights as to her child, Tyler (Tyler). 1JA 65-68 (Findings of Fact, Conclusions of Law and Order Terminating Parental Rights of Tonya Meredith, Eric Lennox, and any Unknown Natural Parents to Tyler Lennox).¹ That same day the Washoe County Department of Social Services (WCDSS) filed and served written notice of the entry of the order. 1JA 69-74 (Notice of Entry of Order). On March 1, 2017, the Washoe County Public Defender's Office timely filed a notice of appeal. 1JA 75-76 (Notice of Appeal).

II. ROUTING STATEMENT

This appeal should be retained by the Nevada Supreme Court under NRAP 17(a)(9) (directing that the Nevada Supreme Court shall hear and decide "cases involving termination of parental rights or NRS Chapter 432B."). Although Ms. Meredith is not contesting the

¹ "JA" stands for Joint Appendix. There are three volumes. Pagination conforms to NRAP 30(c)(1).

termination order, the family court's placement order—which she does contest—is under NRS Chapter 432B.

III. STATEMENT OF THE LEGAL ISSUES PRESENTED

Whether the family court erred in failing to follow the analytical framework of *Clark County Dist. Att'y v. Eighth Judicial Dist. Court* in this child placement proceeding; and relatedly, whether the family court's failure to make and enter written findings in support of its order requires reversal?

IV. STATEMENT OF THE CASE

1.

This is an appeal from an order terminating Ms. Meredith's parental rights as to her child, Tyler; but the appeal does not contest the termination of her parental rights. Rather, this appeal contests the district court's earlier placement order, which placed Tyler in family foster care and not with Ms. Meredith's family members as she requested.

2.

A petition to terminate Ms. Meredith's parental rights to Tyler was filed on October 20, 2015. 1JA 1-8 (Petition to Terminate Parental

Rights). Thereafter the Washoe County Public Defender's Office was appointed to represent her in that proceeding. 1JA 9-10 (Order for Appointment of Counsel). On March 25, 2016, the parties filed a stipulation converting the termination trial into a placement hearing; additionally Ms. Meredith stipulated that "there is a basis to terminate [her] parental rights to [Tyler]." 1JA 11 (Stipulation to Relinquish Parental Rights; Convert Trial to Placement Hearing). The Stipulation also noted that Ms. Meredith was "requesting the placement of Tyler with a relative, Tessa Henderson-Brown who resides in Oakley, California. [And that t]he Washoe County Department of Social Services has placed Tyler with a flexible family home who desires to adopt him." 1JA 12.

A hearing was held before Judge Walker on April 25, 2016 (2JA 77-298) and on May 2, 2016 (3JA 299-452). At the conclusion of the hearing Judge Walker continued Tyler's placement in the flexible family home and did not place him with Ms. Meredith's relative, Tessa Henderson-Brown. Judge Walker reasoned that he was "unwilling to risk [Tyler's] health, safety, and welfare for unknowns" and "authorize[d] the current placement of Tyler," reiterating his

unwillingness “to risk his health, safety, and welfare by removing him from that home with my order.” 3JA 445 (Transcript of Proceedings: Term Parental Rights—Contested Placement Hearing). But these conclusions constitute rhetoric, not analysis and certainly not the analysis required by this Court. And even these conclusions did not find their way into Judge Walker’s written order (prepared by the District Attorney’s Office). There, the sum total finding was this:

The Court, having heard the testimony of the aforementioned witnesses and considering the exhibits admitted, hereby approves current physical placement of Tyler Lennox in family foster care with Jonathan Abrams-Williams and Shelise Abrams-Williams as the least restrictive and most appropriate placement.

1JA 40 (Order).

After the family court entered the placement order, Ms. Meredith petitioned this Court for a writ of mandamus. The family court proceeding was stayed pending the resolution of the writ petition. 1JA 42-43 (Order Granting Stay of Proceedings). On September 16, 2016, this Court denied the petition. 1JA 44-45 (Order Denying Petition for Writ of Mandamus) (concluding that because Ms. Meredith could challenge the family court’s placement order in an appeal from an order

terminating parental rights, she had “a plain, speedy, and adequate remedy at law.”).

3.

On January 23, 2017, the family court held an uncontested hearing on the termination of Ms. Meredith’s parental rights to Tyler. 1JA 46-64 (Transcript of Proceedings: Termination of Parental Rights—Uncontested). At that hearing, Ms. Meredith renewed her request that Tyler be placed her family members. 1JA 62 (noting, through counsel, that she has “a cousin by the name of Tessa Brown who lives in Antioch, California who is ready, willing, and able to be an alternative placement for Tyler.”).

The family court’s parental termination order was filed on January 30, 2017, 1JA 65-68. Notice of entry of the family court’s order was filed on the same day, 1JA 69-74, and Ms. Meredith appeals from that order. 1JA 75-76 (Notice of Appeal).

V. STATEMENT OF THE FACTS

Tessa Henderson-Brown (Tessa) is a first cousin to Ms. Meredith. 2JA 245. She lives with her husband, Dartanious Brown, and their two

daughters in Oakley, California. 2JA 244, 250-51.² She has a master's degree in counseling and a bachelor's degree in psychology. 2JA 248. She is employed as a counselor, department chair, and instructor at the City College of San Francisco. 2JA 244-45, 265-66. She has been married to her husband for fifteen years. 2JA 245.

Around November 17, 2015, Tessa was told by her aunt—Salome Wade—that Tyler was in foster care in Reno. 2JA 246. This was news to Tessa and upon hearing it she contacted WCDSS. 2JA 247. She asked to have contact with Tyler and expressed her desire that she and her family be considered a placement option for Tyler; adding that they wanted to be an adoptive home for Tyler. But WCDSS did not allow her contact with Tyler. 2JA 247. In fact, when Tessa requested contact with Tyler, Melissa Coates (also known as Melissa Ready), of WCDSS, said she would have to check with her supervisors and the foster family first to see if that was an “option.” 2JA 268. According to Tessa, Ms. Coates also represented that she would not be able to have contact until “the Judge had made the determination on if that would be an option or not,

² An older son lives in Sacramento. 2JA 250.

if we were moving forward with an ICPC.” 2JA 268.³ As it turns out, WCDSS never initiated an ICPC for Tessa. 2JA 102. Later Tessa received a letter from WCDSS informing her that she and her family “were not a placement option.” 2JA 248, 268-69. In response Tessa reached out to a supervisor and others trying to have contact with Tyler. 2JA 273-74. But to no avail.

At the hearing below, Tessa testified regarding her family’s activities and their time spent with her extended family. 2JA 251-52, 262-63. She testified that Tyler would be welcomed into the home. 2JA 253-54. She described their large home, the surrounding neighborhood that had both an elementary school and public park that were within walking distance from her home. 2JA 254. In sum Tessa testified that she could provide a loving home for Tyler and that he would grow up knowing his family, including two older siblings. 2JA 255-57. She said, “[Tyler] would just be able to be connected to family members and be able to build relationships, especially with the kids that are around his age group.” 2JA 263. Tessa testified that she wanted to adopt Tyler and be his permanent home. “He’s our family.” 2JA 263. Her husband, an

³ “ICPC” stands for Interstate Compact for the Placement of Children. 2JA 102.

operations manager for a law firm, agreed, and added additional information on their family and family life. See 2JA 281-90.

Ms. Ready testified that she was assigned to Tyler's case in February 2015 (after he had been in the system for approximately six months). 3JA 312. Tyler was initially placed with Britтина Kogan-Hill, a foster parent. 3JA 313. Ms. Kogan-Hill provided care for approximately one year. 3JA 319-20. Ms. Ready said that she had tried to get maternal relative names from Ms. Meredith. 3JA 324-25.

In August 2015 WCDSS had five families expressing an interest "in having Tyler placed in their home for the purpose of adoption." WCDSS limited the selection to three of these families. 3JA 330. And on August 19, 2015 WCDSS "matched" Tyler with a foster family. 3JA 331, 333 (Shelise and John Abrams-Williams). Tyler moved into their home on September 20, 2015. 3JA 337.⁴

⁴ Both foster parents testified to their attachment to Tyler, who they first saw on WCDSS's website. And both testified that they wished to be his permanent family. 2JA 180-191, 207-15. And both indicated that they would not permit Tyler having direct contact with Tessa and her family. 2JA 194-98, 218-19. Interestingly, Ms. Abrams-Williams testified that they learned of Tessa's interest in adopting Tyler only three weeks before the hearing. 2JA 217 ("I just found out, yes."); 221 ("Uh-huh, probably three weeks ago."), 222 (same).

On October 19, 2015 Ms. Ready met with Ms. Meredith. 3JA 343. At that time Ms. Meredith told her that she had an aunt named Salome Wade who lived in California; Ms. Ready testified that she did not have a phone number or address for her aunt. 3JA 344, 404, 411.⁵

Several weeks later (in November) Ms. Ready submitted a “diligent search request to Suzy Heinz to locate Salome Wade.” 3JA 345, 359-60. According to Ms. Heinz, a program assistant, despite her use of several search tools, 2JA 226, 230-32, she could not locate Ms. Wade. But an investigator for the Washoe County Public Defender’s Office did—and that information was shared with Ms. Ready. 3JA 345, 360.⁶ While Ms. Wade told Ms. Ready that she would not be a placement option, she identified Tessa as someone who would be. 3JA 345. Ms. Ready contacted Tessa by phone. According to Ms. Ready, Tessa—at that time—did not indicate a willingness to be an adoptive placement

⁵ In contrast, Ms. Meredith testified that she gave her aunt’s contact information (and location in Bay Point, California) to Ms. Ready in September 2015. 3JA 393-94. Ms. Meredith explained that she wanted Tyler with his family so that he could build a relationship with them. 3JA 395-96. She felt that this result would be in Tyler’s best interest. 3JA 396-97.

⁶ Tom Bolan, a family court investigative specialist at the Washoe County Public Defender’s Office, testified that he too conducted a search (Google, Facebook) and found Ms. Wade in “probably 20 minutes”—including “getting a cup of coffee.” 2JA 276-79.

for Tyler. 3JA 345-46. Tessa disputed this characterization at the hearing below. 2JA 266 (noting that she had no reservations “at all.”). Indeed, during the week of November 20, 2015, Tessa told Ms. Ready she wanted an ICPC done.⁷ Later she said she would like to have contact with Tyler. 3JA 347-48, 364.

The request for contact was made in December 2015. 3JA 348. However, because Ms. Ready and Ms. Tricia Woodliff—then Tyler’s therapist⁸—thought they should wait to see how the family adoptive placement went before seeking an ICPC for Tessa, contact was denied. 3JA 348-49, 365-66. (As previously noted, an ICPC for Tessa was not done.) Ms. Ready admitted that WCDSS “had ruled out family placement. [Tyler] was in a permanent home.” And that she was no longer willing to consider a family placement. 3JA 372-73; and 2JA 104

⁷ Notably, when Tessa made this request Tyler had been in the family foster home for only two months. 3JA 372.

⁸ Ms. Woodliff is no longer treating Tyler because he completed his therapy. 2JA 126; 3JA 370. Ms. Woodliff testified that Tyler (now five) responded to therapy, was smart, and very resilient. 2JA 147, 149, 157. And that he could, with a plan, form other primary attachments. 2JA 168-69. Similarly, Ms. Christa Kachurak, the program director for Project Safe and Growing, had Tyler in a day treatment for children’s program from July 2015 through February 2016. 2JA 170-73. But he was “doing so well that he did not need to be in the program any longer.” 2JA 173-74. “He had met all of his treatment goals.” 2JA 174-76.

(Amy Reynolds, supervisor of an ongoing permanency unit) (“This was an identified permanent home.”); *Id.* (Tyler was “told this was his forever home[.]”). Notably, Ms. Reynolds has never spoken directly with Tessa; her information about Tessa’s interest and desires was conveyed to her by Ms. Ready. 2JA 108-09; and *Id.* at 110 (same regarding Ms. Woodliff). In sum, it appears that WCDSS had its placement preference.

VI. SUMMARY OF ARGUMENT

In a child placement proceeding under NRS Chapter 432B, the statutory framework creates a preference for placement with a suitable family member, but a family district court must consider the child’s best interest when deciding whether to place the child with family members or with an adoptive foster family. More specifically, where, as in this case, an initial non-family placement has been made before a family member seeks custody, the family court must “consider placing the child with the relatives, if this placement serves the child’s best interest.” This analysis is not satisfied by a default placement with the initial non-family placement; it would be contrary to the statute to find that a child’s best interest is *always* met by maintaining the Department’s desired placement. Such a default constitutes an abuse of discretion.

Finally, a family district court must make written findings in support of its child placement determination.

VII. ARGUMENT

The family court abused its discretion by its default placement of Tyler with its initial non-family adoptive placement, and by not explaining how this placement—in lieu of a placement with suitable family members—was in Tyler’s best interest.

Standard of Review

A family district court’s placement determination is reviewed for an abuse of discretion. *Clark County Dist. Att’y v. Eighth Judicial Dist. Court*, 123 Nev. 337, 348, 167 P.3d 922, 929 (2007).

Discussion

NRS 432B.550(5) and (6) provides in relevant part:

5. In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of the parents of the child or guardian:

... .

(b) Preference must be given to placing the child in the following order:

(1) With any person related within the fifth degree of consanguinity to the child or a fictive kin, and who is suitable and able to provide

proper care and guidance for the child, regardless of whether the relative or fictive kin resides within this State.

... .

6. Any search for a relative with whom to place a child pursuant to this section must be completed within 1 year after the initial placement of the child outside of the home of the child.

In *Clark County Dist. Att’y. v. Eighth Judicial Dist. Court*, 123 Nev. 337, 167 P.3d 922 (2007), this Court established for family district courts an analytical framework to be used when considering the statutory placement preference for relatives acknowledged by NRS 432B.550(5). In determining an initial placement of a child with relatives interested in having the child placed with them, the family court should “first resolve whether a familial preference exists,”—and “whether the relative is suitable and able to provide proper care and guidance for the child.” *Id.* at 346, 167 P.3d at 928. If so placement with the relative is favored. *Id.*

If, however—as in the instant case—

an initial non-family placement is made before interested relatives are before the court, and interested relatives then timely seek custody, the [family] court should again determine whether the familial preference exists and, *if so, consider*

placing the child with relatives, if this placement serves the child's best interest.

Id. (italics added). This Court noted that because “neither the relatives nor nonrelatives who seek custody of the child occupy the status of parent in the proceedings, the child best interest necessarily is the main consideration for the district court when exercising its discretion concerning placement.” *Id.* (footnote omitted).

Finally, “[g]iven the importance of the district court’s child placement decisions as well as the inherent difficulties in reviewing matters with the district court’s discretion, written factual findings, both with respect to credibility determinations as well as evaluations of the child’s best interest, must be made.” *Id.* at 349, 167 P.3d at 929.

As an initial matter, the family court’s written order does not comply with this Court’s directive in *Clark County Dist. Att’y* and does not reference, let alone analyze (under a best interest of the child standard (or any standard)), any specific fact or set of facts or evidence presented by the parties during the two-day bench trial. Nor does the order explain, based on the record evidence, why or on what basis the family court continued Tyler’s placement in the foster family home instead of placing Tyler with his relatives who had requested an

adoptive placement, and who were ready, willing, and able to bring Tyler into their home. The absence of “written findings with respect to any credibility issues” suggests that the family court’s “best interest of the child analysis” was a merely default acquiesce to WCDSS’s placement decision. A default placement with the initial non-family placement is contrary to the statute. Moreover, to find that a child’s best interest is *always* met by maintaining the Department’s desired placement constitutes an abuse of discretion.

The family court’s order also avoids the task of crediting credibility. *Cf. Davis v. Ewalefo*, 131 Nev. Adv. Op. 45, 352 P.3d 1139, 1143 (2015) (“Specific findings and an adequate explanation of the reasons for the custody determination are crucial ... for appellate review. Without them, this court cannot say with assurance that the custody determination was made for appropriate legal reasons.”) (internal quotation marks omitted).

The record suggests that WCDSS was not excited that Tessa entered the picture within two months of Tyler’s placement in the flexible foster home. See 3JA 360 (Melissa Ready) (“... because it was quite a, like oh, bummer, this is happening at this point.”). Perhaps

consistent with this thought, WCDSS never initiated an ICPC for Tessa; denied her direct (or even indirect) contact with Tyler; ruled out Tessa as a family placement; and promoted Tyler's placement in the flexible foster home. Given these obstacles, Tessa's interest in having Tyler placed with her and her family was not fully and fairly considered by the family court. And given the record—especially the educational, financial, and family background information supplied by Tessa and her husband—this Court should be hard pressed to credit the family court's oral comments on a supposed "risk" to Tyler's "health, safety, and welfare for unknowns." 3JA 445. That is, the family court's oral comments fare no better than his written order in complying with this Court's directive to make placement determinations that are in the best interest of the child. See 3JA 442-45 (focusing on expeditious resolution and not on credibility determinations; equating best interest with Tyler's chronological age and removal; electing not to decide if WCDSS "did or did not act reasonably"; and rhetorically defaulting to WCDSS's preferred flexible foster home placement).

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VIII. CONCLUSION

For the reasons stated, Ms. Meredith requests that this Court reverse and vacate the placement order entered below, and remand with directions to the family court to reconsider Tyler's placement for adoption with Ms. Meredith's first cousin Tessa Henderson-Brown and her family. Moreover, this Court should instruct the family court to make written findings in support of any subsequent placement order it enters in this case.

DATED this 9th day of June 2017.

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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 Century in 14-point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, even including the parts of the brief though exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains a total of 3,415 words. NRAP 32(a) (7) (A) (i), (ii).

3. 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)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied upon is to be found. 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 9th day of June 2017.

/s/ John Reese Petty

JOHN REESE PETTY

Chief Deputy, Nevada State Bar No.10

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 9th day of June 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jeffrey Martin, Chief Deputy District Attorney
Washoe County District Attorney's Office

I further certify that I served a copy of this document by providing a copy to:

Tonya Meredith.

John Reese Petty
Washoe County Public Defender's Office