

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
PARENTAL RIGHTS AS TO:

Electronically Filed
Jul 13 2017 02:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

T.L.,

Minor Child,

Case No.72563

TONYA MEREDITH,

District Court Case No. FV15-03927

Appellant,

v.

WASHOE COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Respondents.

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

RESPONDENT'S ANSWERING BRIEF

CHRISTOPHER J. HICKS
Washoe County District Attorney

By /s/ Jeffrey S. Martin
JEFFREY S. MARTIN
Chief Deputy District Attorney
Nevada State Bar No. 7080
P. O. Box 11130
Reno, NV 89520-0027
(775) 337-5700
ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	1
II. STATEMENT OF THE CASE	1
III. STATEMENT OF THE FACTS	3
IV. STANDARD OF REVIEW	9
V. SUMMARY OF THE ARGUMENT	10
VI. ARGUMENT	11
VII. CONCLUSION	14

TABLE OF AUTHORITIES

Cases

<u>Clark County Dist. Atty., Juvenile Div. v. Eighth Judicial Dist. Court ex rel County of Clark</u>	
123 Nev. 337, 339, 167 P.3d 922, 923 (2007) NRSA 432B.550(5)(b).....	10, 12
<u>Jacinto v. PennyMac Corp.</u>	
300 P.3d 724, 129 Nev. Adv. Op. 32.....	12
<u>Webb ex rel. Webb v. Clark Cnty. Sch. Dist.</u>	
125 Nev. 611, 617, 218 P.3d 1239, 1244 (2009).....	11

Statutes

NRS 432B.550(5)(b).....	12
-------------------------	----

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the Appellant has standing to appeal a placement decision by a District Court after her parental rights have been terminated and the termination judgment is not under appeal and, if the Appellant has standing, whether the District Court abused its discretion in allowing T.L. to remain with his foster parents, who had been identified as a prospective adoptive home for the child.

II. STATEMENT OF THE CASE

This case stems from a termination of parental rights action as to the child's natural father and natural mother, the Appellant, Tonya Meredith, brought by the child's legal custodian the Washoe County Department of Social Services. JA at Vol. 1, pages 1-7. On March 25, 2016, Ms. Meredith, entered into a stipulation with Respondent, the Washoe County Department of Social Services to convert the termination of parental rights trial to a contested placement hearing. JA at Vol. 1, page 12, lines 5-8. Ms. Meredith agreed to voluntarily relinquish her parental rights upon the conclusion of the contested placement hearing. Id. at line 9-10. The stipulation further provided that if Ms. Meredith failed to relinquish her parental rights, the Department could request an order terminating her parental rights upon testimony. Id. at lines 11-16. On April 25, and May 2, 2016, the District Court held a placement hearing to determine whether T.L. should be removed from his flexible family home and placed with his relative, Tessa Henderson-Brown. JA

Vol. 1, page 12, lines 1-8. At the hearing, the assigned social worker, Melissa Ready, testified that she regularly inquired of Ms. Meredith, from February 2015 through June, 2015, regarding the presence of maternal relatives. JA at Vol. 3, page 325, lines 1-13. Ms. Ready testified that on August 5, 2015, the Court held a 12-month permanency hearing, at which Ms. Ready discussed potential adoptive placements, yet Ms. Meredith had not identified a potential relative placement. Id. at page 328, lines 18-25, page 329, lines 1-13, page 325, lines 7-9.

Ms. Ready testified that Shelise and John Abrams-Williams were selected as T.L.'s prospective adoptive placement on August 19, 2015. Id. at page 333, lines 11-18. Ms. Ready testified that on October 19, 2015, Appellant, Ms. Meredith identified a maternal aunt, Salome Wade, without providing a phone number or an address to contact her. Id. at page 343, lines 20-21, page 344, lines 11-23.

Ms. Ready testified she did not receive information regarding Tessa Henderson – Brown until November, 2015. Id. at page 345, lines 13-21. Ms. Ready further testified she made initial telephone contact with Ms. Henderson-Brown on November 17, 2015, however Ms. Henderson-Brown did not request contact with the child at that time and did not indicate a willingness to be in adoptive placement for T.L. Id. at page 345, lines 22-25, 346 at lines 22-25. At that time, T.L. was already placed with Mr. and Mrs. Abrams-Williams, with whom the child had been transitioning since August 27, 2015. Id. at page 335 line 11–21, page 336, lines 1-

20, page 337, lines 15– 24. T.L.’s therapist, Tricia Woodliff testified that T.L. suffered from posttraumatic stress disorder, was attached to Mr. and Mrs. Abrams-Williams and that removal would create attachment problems for him in the future. JA Vol. 2, page 127, lines 3–14, page 137, lines 12–25, page 138, lines 8-21. At the conclusion of the hearing, the District Court affirmed T.L.’s placement with Mr. and Mrs. Abrams-Williams, finding that Ms. Meredith failed to disclose relative information, that T.L. was bonded and attached Mr. and Mrs. Abrams-Williams and that there is a risk to T.L.’s health safety and welfare by removing him from his current placement. JA Vol. 3, page 443, lines 14–17, page 445, lines 8–18.

After the hearing, Ms. Meredith and Mr. Lennox had failed to relinquish their parental rights consequently the Court did take testimony and terminated Ms. Meredith and Mr. Lennox’s parental rights, See generally JV Vol. I, 46-63. Neither parent is appealing the termination of their parental rights, which is now a final order. Accordingly, Ms. Meredith lacks standing to appeal the District Court’s placement decision. In the alternative, the District Court did not abuse its discretion in affirming T.L. placement with Mr. and Mrs. Abrams-Williams.

III. STATEMENT OF THE FACTS

On March 25, 2016, Appellant, Ms. Meredith, entered into a stipulation with Respondent, the Washoe County Department of Social Services, to convert the

termination of parental rights trial to a contested placement hearing. JA at Vol. 1, page 12, lines 5-8. Ms. Meredith agreed to voluntarily relinquish her parental rights upon the conclusion of the contested placement hearing. Id. at line 9-10. The stipulation further provided that if Ms. Meredith failed to relinquish her parental rights, Respondent, Washoe County Department of Social Services could request an order terminating her parental rights upon testimony. Id. at lines 11-16. On April 25, and May 2, 2016, the District Court held a placement hearing to determine whether T.L. should be removed from his flexible family home and placed with his relative, Tessa Henderson–Brown. JA Vol. I, page 12, lines 1-8.

In support of the Respondent, Amy Reynolds, Social Services Supervisor from the Washoe County Department of Services, testified that T.L. had been in the home of a foster parent, Brittina Kogan-Hill for approximately one year of his initial foster care placement. JA Vol. 2, page 97, lines 16-19. She testified as to how the Department located a prospective adoptive placement for T.L. once adoption was identified as a permanency plan and the extensive transition that occurred from Ms. Kogan-Hill's home to Mr. and Mrs. Abrams-Williams' home. Id. at page 98, lines 12-23, page 99, lines 1-7, page 100, lines 13-25, page 101, lines 1-16. She testified the agency had already begun T.L.'s transition in August, 2015 and did not learn of the existence of the relative, Ms. Henderson–Brown until November, 2015. Id. at page 101, lines 6-10, page 102, lines 4-12. Ms. Reynolds

testified that upon the Department's first conversation with Ms. Brown, she did not state whether she would be in adoptive placement, but she explained that she was willing to keep T.L. until the mother was released from incarceration and then give him back. Id. at page 102, lines 21-25, page 103, lines 1-5. Ms. Reynolds testified that Ms. Brown declined photograph of T.L. to see what he looked like, and did not ask about T.L. or even his personality. Id. at page 103, lines 6-11. Ms. Reynolds testified that she did not consider placement with Ms. Brown as T.L. was bonded to Mr. and Mrs. Abrams–Williams and T.L.'s therapist did not support yet another transition for the child. Id. at page 103, lines 22-25, page 104, lines 1-16.

The assigned social worker, Melissa Ready, testified that she regularly inquired of Ms. Meredith, from February 2015 through June, 2015, regarding the presence of maternal relatives. JA at Vol. 3, page 325, lines 1-13. Ms. Ready testified that on August 5, 2015, the District Court held a 12 month permanency hearing, at which Ms. Ready discussed potential adoptive placements, yet still Ms. Meredith had not identified a potential relatives for placement. Id. at page 328, lines 18-25, page 329, lines 1-13, page 325, lines 7-9. Ms. Ready testified that Ms. Meredith did not provide relative information until approximately October 19, 2015. Id. at page 325, lines 7-9. Ms. Ready testified that she had continued to ask Ms. Meredith relative information throughout the case, as she believed there had to be a relative willing to take placement of T.L. Id. at page 325, lines 14-15.

Ms. Ready testified “. . . It just didn’t make sense that there were so many relatives in this case, that it’s like there had to be somebody somewhere. Like we even had at the nine month hearing, Paige Dollinger was still mom’s Public Defender before Ms. Riley took over, and we even provided Paige Dollinger with all the information we had on the relatives because we thought maybe if someone came from a less Social Services perspective, that someone would respond. The foster parent, Ms. Brittna Kogan-Hill got on Facebook, and any-- excuse me, any Lennox or Meredith -- I don’t do Facebook so I wouldn’t know how to do it -- but she got on Facebook to help us try to locate relatives. So it’s like, to me, it’s like T.L. is a wonderful little kid, and we want him to be with them, and it’s like I was just urging these parents. It’s like there’s got to be a cousin, a something somewhere to take this kid before we get the recruitment, before we hit the 12 months and had no choice but to move on.” Id. at pages 325, lines 16-25, page 326, lines 1-11.

Ms. Ready further testified that she discussed potential adoptive homes at the 12 month permanency hearing on August 5, 2015. Id. at page 328, lines 21-25, page 329, lines 1-13. Ms. Ready testified “and I also presented at the hearing that we have three possible matches for him and that we were moving forward with matching.” Id. at lines 10-13. Ms. Ready testified that T.L.’s prospective adoptive placement was selected on August 19, 2015. Id. at page 333, lines 16-18. A

transition plan was established and began on August 27, 2015. Id. at page 335, lines 11-21. T.L.'s therapist, Tricia Woodliff, assisted with the transition. Id. at page 337, line 25, page 338, lines 1-7. Ms. Ready testified that she observed a natural connection between T.L. and Mr. and Mrs. Abrams–Williams. Id. at page 338, lines 21-22.

The Department placed T.L. with Mr. and Mrs. Abrams-Williams September 20, 2015. Id. at page 341, line 8. Ms. Ready then met with Ms. Meredith at the Washoe County Regional Detention Facility, on October 19, 2015. Id. at page 343, lines 17-21. At that time, Ms. Meredith informed Ms. Ready of the existence of an aunt, Salome Wade, but she was not aware of an address or telephone number. Id. at page 344 lines 11-21. Ms. Wade was located on November 17, 2015. Ms. Wade was unwilling to be a placement, but provided contact information for Ms. Henderson-Brown. Id. at page 345, lines 12-21. Ms. Ready had an initial conversation with Ms. Brown, but Ms. Brown talked about being a support system for the parents and if Ms. Meredith were to finish her criminal requirements, then T.L. could return to his mother's care. Id. at page 346, lines 1-6. During the initial conversation, Ms. Brown did not inquiry to T.L.'s welfare, did not inquire as to his clinical needs and did not request contact. Id. at lines 7-25. Ms. Brown indicated that placement was a family decision. Id. at page 347, lines 1-11. Ms. Ready testified that Ms. Brown contacted her November 20, 2015 and requested

placement T.L., although she did not request contact with the child until February 21, 2016. Id. at lines 14-25, page 348, lines 1-4. Ms. Woodliff however, did not recommend contact until a placement decision was made. Id. at 10-17. Ultimately, the agency did not support placement with Ms. Brown, as Ms. Meredith failed to provide relative information for over a year, T.L. was in his third placement, and that a subsequent placement could damage his ability to attach to a placement. Id. at page 349, lines 2-14. Ms. Ready testified that T.L. was thriving in Mr. and Mrs. Abrams-Williams care, he had graduated day treatment and was doing extraordinarily well in their care. Id. at page 350, lines 5-22.

Tricia Woodliff, T.L.'s mental health counselor also testified in support of Mr. and Mrs. Abrams – Williams. JA at Vol. 2, lines 1-23. Ms. Woodliff diagnosed T.L. with posttraumatic stress disorder, which was modified to a diagnosis of inhibited social engagement disorder. Id. at page 126, lines 20-25, page 127, lines 1-2. She testified that a child suffers from disinhibited social engagement disorder when they demonstrate a lack of clear attachment. Id. at lines 19-22. She stated that T.L. demonstrated limited communication, aggressiveness and tantrums when she began working with him. Id. at page 128, lines 5-9. She further stated that T.L. would go to random people for care as opposed to his primary caregivers. Id. at lines 8-9. She testified that T.L. has a need for consistency, structure and warmth which he was receiving in his current home and had built and attachment. Id. at

page 134, lines 13-17. T.L. had shown such significant improvement, that she had closed his case. Id. at lines 6-10. Ms. Woodliff felt that T.L.'s improvement was due to his current home and his prospective adoptive parents, who he attached to as his primary attachment figures. Id. at page 136, lines 5-13. Ms. Woodliff was concerned about attachment issues for T.L. if he were removed from his home. Id. at page 138, lines 8-12.

The District Court, after hearing testimony affirmed T.L.'s placement with Mr. and Mrs. Abrams-Williams, finding that the child had bonded to his placement, that Ms. Meredith had been dishonest about relatives and that her choices that prevented T.L.'s bonding to his extended family. JA at Vol. 3, pages 443, lines 15-17, page 445, lines 1-7. The District Court indicated it was unwilling to risk T.L.'s health, safety and welfare to place him in another placement. Id. at page 445, lines 8-18.

On January 30, 2017, the District Court issued a Findings of Fact, Conclusions of Law and Order Terminating Parental Rights of Appellant, Ms. Meredith. Id. at pages 65-68. That Judgment is not the subject of this appeal.

IV. STANDARD OF REVIEW

A child's placement decision ultimately rests in the district court's discretion, which must be guided by careful consideration of the child's best

interest. Clark County Dist. Atty., Juvenile Div. v. Eighth Judicial Dist. Court ex rel County of Clark, 123 Nev. 337, 339, 167 P.3d 922, 923 (2007) NRSA 432B.550(5)(b).

V. SUMMARY OF THE ARGUMENT

Appellant, Tonya Meredith argues that the District Court erred when it affirmed T.L.'s placement with his prospective adoptive home, John and Shelise Abrams–Williams over his mother's first cousin, Tessa Henderson–Brown. Ms. Meredith lacks standing to appeal the District Court's placement decision. Ms. Meredith's rights have been terminated pursuant to a final judgment and order entered on January 30, 2017. JA Vol. I, page 65 at pages 65-68. As the order terminating parental rights is not under appeal, it is a final judgment which severs Ms. Meredith's legal ties to the minor child T.L. While it is understood that Ms. Meredith disagrees with the placement, Ms. Meredith does not have any parental rights to T.L. which are affected by the court's order. The District Court's order terminating her parental rights severs the legal relationship between herself and T.L., and those rights are no longer affected by the District Court's placement order.

If it is determined that Ms. Meredith has standing in the instant appeal, the District Court did not abuse its discretion in its determination that T.L.'s placement with Mr. and Mrs. Abrams–Williams was in the child's best interest as opposed to

placing the child with maternal relatives with whom the child had not known or bonded. Ms. Meredith failed to provide any information regarding her relatives until well after T.L. had been in the care and custody of the Washoe County Department of Social Services for over 12 months. JA Vol. 3, at page 328, lines 18-25, page 329, lines 1-13, page 325, lines 7-9. The testimony of Ms. Reynolds, Ms. Ready and Ms. Woodliff, supported the District Court's determination that T.L. was in a safe, stable and healthy home, fully integrated and thriving with Mr. and Mrs. Abrams-Williams. Id at page 445, lines 8-18. The District Court's determination to support T.L.'s placement with Mr. and Mrs. Abrams-Williams was clearly in the child's best interest.

VI. ARGUMENT

Respondent, Tonya Meredith, does not have standing to appeal the placement order by the court as her parental rights have been terminated and the termination order is not under appeal. RAP 3A (a) provides "[a] party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without moving for a new trial. To be aggrieved, a party must be adversely and substantially affected by the challenged judgment. Webb ex rel. Webb v. Clark Cnty. Sch. Dist., 125 Nev. 611, 617, 218 P.3d 1239, 1244 (2009). In other words, a party is aggrieved when a judgment causes a "substantial

grievance,” such as the denial of some personal or property right. Id. Jacinto v. PennyMac Corp., 300 P.3d 724, 129 Nev. Adv. Op. 32.

Ms. Meredith had an interest in T.L.’s care and custody, until her parental rights were terminated. As the Judgment terminating her rights is not subject to this appeal, the order is a final judgment adjudicating her rights as to T.L. As her rights have been severed, Ms. Meredith’s standing is now as a legal stranger to the minor child and her rights are no longer affected in any way by the District Court’s placement decision. Ms. Meredith’s rights to the care and custody of T.L. ended on January 30, 2017, and she lacks standing to appeal the District Court’s placement decision.

If Ms. Meredith did have standing, the District Court did not abuse its discretion in determining that T.L.’s placement with Mr. and Mrs. Abrams-Williams was in the child’s best interest. Pursuant to NRS 432B.550(5)(b), there is a familial preference in child protection proceedings, however that preference is not a presumption and while the District Court must then consider placing the child with a relative, the court’s decision must be carefully guided by the child’s best interest. Clark County Dist. Atty., Juvenile Div. v. Eighth Judicial Dist. Court ex rel. County of Clark, 123 Nev. 337, 342, 167 P.3d 922, 925 (2007). Placing T.L. with Ms. Meredith’s first cousin, Ms. Brown is not an automatic placement. The

District Court carefully weighed T.L.'s best interests in its placement decision. The ability of T.L.'s custodian to make a relative placement was prejudiced by Ms. Meredith's refusal to provide relative information until after the child had been in out of home care for over 12 months. JA Vol 3, page 443, lines 10-23. The Department identified a prospective adoptive placement for T.L. in the absence of such information from the child's mother. Id. at page 325, lines 16-25, page 326, lines 1-11. The Department executed a carefully thought out transition plan in consultation with T.L.'s therapist to ensure his safety and well-being. Id. at page 337, line 25, page 338, lines 1-7. By the time T.L. was placed with Mr. and Mrs. Abrams-Williams, the child had already been transitioning into their home on for approximately a month and immediately attached to them is his family and his primary caregivers. T.L. did not have an established relationship with Ms. Meredith's cousin or her family. JA Vol. 2, page 103, lines 6-17. T.L. was happy and thriving and even out of counseling in Mr. and Mrs. Abrams-Williams' care. Id. at lines 16-17, page 136, lines 5-13. T.L.'s therapist believed that it was important that T.L. bond to a permanent placement and that his history of multiple placement placed him at risk for attachment problems. JA at Vol. 2, page 133, lines 9-25. The District Court after hearing considerable testimony, made a determination that removing T.L. from his currently placement was not in his best

interests and that Ms. Meredith herself prejudiced the Department's ability to locate a potential relative placement for the child. JA at Vol. 3, page 443, lines 10-25, page 444, lines 1-10, page 445, lines 8-18. The District Court clearly acted within its discretion and T.L.'s best interest when it affirmed his placement. Ms. Meredith's appeal should be denied due to her lack of standing and on the merits of the lower Court's decision

VII. CONCLUSION

Ms. Meredith's appeal of the District Court's placement decision should be dismissed for her lack of standing. Ms. Meredith's parental rights have been terminated and are therefore unaffected by the District Court's placement decision at this time. Ms. Meredith did not appeal the District Court's decision to terminate her parental rights, finding parental fault and that T.L.'s best interest would be served by the severance her rights. Even if Ms. Meredith did have standing to appeal the District Court's placement decision, the District Court did not abuse its discretion in continuing placement with Mr. and Mrs. Abrams-Williams. While a familial preference exists, it is not a presumption, and it is guided by the child's best interests. While Ms. Meredith refused to provide relative information, prejudicing the Department's ability to find a familial placement, T.L. was matched with a prospective adoptive home, with whom the child is bonded,

identifies as his family, is happy and thriving. The District Court took into consideration the witness testimony of made a decision which was carefully guided by T.L.'s best interest. The decision of the District Court should be affirmed.

Dated this 13th day of July, 2017.

CHRISTOPHER J. HICKS
Washoe County District Attorney

By /s/ Jeffrey S. Martin
JEFFREY S. MARTIN
Chief Deputy District Attorney
Nevada State Bar No. 7080
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 3507 words.

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 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 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 13th day of July, 2017.

CHRISTOPHER J. HICKS
Washoe County District Attorney

By /s/ Jeffrey S. Martin
JEFFREY S. MARTIN
Chief Deputy District Attorney
Nevada State Bar No. 7080
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 Petty
Washoe County Public Defender's Office

Dated this 13th day July, 2017.

/s/ C. Mendoza
C. Mendoza