

In the Matter of the Parental Rights as  
to L.L.L.S., Minor.

TAHJA LUJAN,  
Appellant,  
vs.  
CLARK COUNTY DEPARTMENT  
OF FAMILY SERVICES; L.L.S,  
MINOR,  
Respondents.

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DISTRICT COURT: J-17-341672-P1

Appeal from an Order Terminating the Parental Rights After a Trial, Eighth Judicial District Court. Honorable

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## STATEMENT OF THE FACTS

Three-year-old L.L.S. has resided in foster care for over 80% of her life due to her mother's lack of motivation to consistently place L.L.S.'s needs above her own. (AA, Vol III, part 1, p. 000502). On January 21, 2017, when L.L.S. was six-months-old, her mother, Tahja Lujan, insisted she place L.L.S. in the Department of Family Service's (hereinafter "Department") care, despite the Department's efforts to provide her with alternative solutions. (AA, Vol III, part 1, p. 000491). Even though Tahja had been L.L.S.'s primary care provider for only three out of L.L.S.'s six months of life, Tahja appeared overwhelmed and unmotivated to parent L.L.S. (Id.). Instead of trying to see what resources were available for her and L.L.S., Tahja decided to place L.L.S. into protective custody. (RA p.3). As a result, the Department identified three impending danger threats<sup>1</sup> as to L.L.S.: (1) Family does not have resources to meet basic needs; (2) One or both parents/caregivers fear they will maltreat the child and/or request placement; and (3) One or both parents/caregivers

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<sup>1</sup> The Department abides by the Safety Intervention and Permanency System (SIPS) model. SIPS identifies impending danger threats as dangerous family conditions that represent situations/circumstances, caregiver behaviors, emotions, attitudes, perception, motives, and intention which place a child in a continuous state of danger that are out of control in the presence of a vulnerable child and therefore likely to have severe effects on a child at any time in the near future. <http://www.lacsnprobono.org/wp-content/uploads/2014/04/DFS-Safety-Model-SIPS-PowerPoint-Presentation.pdf>, accessed on November 24, 2019.

1 lack parenting knowledge, skills, and motivation which affect child safety. (RA pp.  
2 4-5).

3 On February 8, 2017, the Department, through the District Attorney's Office,  
4 filed a Petition alleging L.L.S. was in need of protection due Tahja's abuse and/or  
5 neglect. (AA, Vol I, part 1, pp.000001-000002). Without objection to the filing of  
6 the Petition, Tahja admitted to the Petition. (AA, Vol III, part 1, p. 000491).

7 After the court substantiated the Petition with allegations as to the same, the  
8 Department created and case plan to assist Tahja with reunifying with her daughter.  
9 (Id.). The Department identified behaviors that would exemplify demonstration of  
10 enhanced Caregiver Protective Capacity and meet L.L.S.'s needs. (AA, Vol I, part  
11 1, p.000032). These behaviors, also known as case plan goals, most notably required  
12 Tahja to put L.L.S.'s needs before her own, demonstrate that she was positively  
13 attached to L.L.S., and demonstrate that her bond with L.L.S. exceeded other  
14 relationships in her life. (Id.).

15 While case plan goals outline the necessary behavioral changes a parent must  
16 demonstrate before the Department requests to terminate their involvement,  
17 Conditions for Return enumerate the necessary circumstances that must exist for the  
18 Department to successfully and safely mitigate the impending danger threats to place  
19 a child in a parent's home with an in-home safety plan. (AA, Vol IV, part 2, p.000873  
20 and [http://www.lacsnpobono.org/wp-content/uploads/2014/04/DFS-Safety-Model-](http://www.lacsnpobono.org/wp-content/uploads/2014/04/DFS-Safety-Model-SIPS-PowerPoint-Presentation.pdf)  
21 [SIPS-PowerPoint-Presentation.pdf](http://www.lacsnpobono.org/wp-content/uploads/2014/04/DFS-Safety-Model-SIPS-PowerPoint-Presentation.pdf), accessed on November 24, 2019.).

1 Here, the Department identified four specific Conditions for Return that must  
2 have existed for the Department to safely place L.L.S. in Tahja's care: (1) Tahja will  
3 have place to live where an in-home safety plan can confidently be put in place; (2)  
4 Tahja will maintain a residence and there is confidence that the living arrangements  
5 is suitable; (3) Tahja will demonstrate a genuine interest in having her daughter back  
6 home by actively participating in plans to get L.L.S. back into her care. This includes  
7 keeping in contact with the Department, providing information about possible  
8 relatives or fictive kin and making efforts to see her daughter; and (4) Tahja will  
9 have a consistent routine and schedule in which an in-home safety plan may be  
10 developed. Persons who frequent the home are known to DFS and have been  
11 approved. (AA, Vol I, part 1, p.000065).

12 During the first review period, January through July 2017, Tahja's progress  
13 in meeting her case plan goals or even her Conditions for Return ebbed and flowed.  
14 Tahja's visitation with L.L.S. was sporadic. (AA, Vol I, part 1, p. 000038). Tahja  
15 was relying on social security survivor benefits to meet her financial needs and  
16 would only receive these benefits if she attended school. (RA p.1). While Tahja did  
17 enroll in school and had her benefits reinstated, she got into a fight at school in June  
18 2017 and was subsequently expelled. (AA, Vol I, part 1, p. 000041).

19 In September 2017, the Department placed L.L.S. in Tahja's care on a trial  
20 home visit, but the plan failed after only a month. (AA, Vol I. part 2, p. 000122).  
21 Tahja lost her housing as a result of her behavior towards the in-home safety monitor

1 and was unable to follow the rules of the safety plan. (AA, Vol I, part 2, p. 000123).

2 At the end of November 2017, the Department assisted Tahja in obtaining  
3 housing through Children's First, but Tahja struggled to follow the program's rules.  
4 (AA, Vol IV, part 1, p.000655). Children's First helps young mothers and expectant  
5 young mothers with housing. (AA, Vol I, part 2, p. 000123). Tahja was eligible for  
6 the program because she was pregnant with her second child. (Id.). Children's First  
7 restricted the young mothers from having drugs or alcohol in their apartments, did  
8 not allow pets, required participants to go to school, work, or engage in parenting  
9 services, and did not allow unauthorized guests. (AA, Vol IV, pp.000654-000667).  
10 Tahja was in violation of four different rules within less than a month of entering the  
11 program. (Id.). Tahja had a pet in the home, the home smelled of marijuana, Tahja  
12 was not going to school and had an unauthorized person in the home, who Tahja  
13 identified as her cousin. (Id.). As a result of Tahja's lack of progress and her failing  
14 to maintain visits with L.L.S. the court changed the permanency goal to Adoption  
15 via termination of parental rights. (AA, Vol I, part 2, p. 000158).

16 Unfortunately, also at the end of 2017, Tahja demonstrated a lack of bond  
17 with L.L.S. when she continued to come in and out of L.L.S.'s life. (AA, Vol I, part  
18 2, p. 000126). Tahja rarely took advantage of the opportunity to visit with L.L.S.  
19 during her twice per week visits and missed every visit with L.L.S. during December  
20 2017. (Id.). In January 2018, Tahja's visits were canceled all together due to her  
21 Tahja's continued failure to appear at the visits. (Id.).



1 On April 11, 2018, Tahja gave birth to her second child, J.J.B. and disclosed  
2 that she intended to give up her housing to move in with Jonathan, J.J.B's father,  
3 and Jonathan's mother in the very near future. (AA, Vol I, part 2, p.00191). Based  
4 on this plan, the Department discussed what they would need to observe from both  
5 Tahja and Jonathan in order to place L.L.S. in the home with them. (Id.). As of May  
6 7, 2018, Tahja confirmed her plan was still to move herself and J.J.B. into the home  
7 with Jonathan, but had not yet done so. (AA, Vol I, part 2, p.000192).

8 Unbeknownst to the Department, Tahja's behavior was spiraling out of  
9 control in May 2018. On May 9, 2018, Jonathan was arrested for perpetrating  
10 domestic violence against Tahja. (AA, Vol I, part 2, p.000193). On May 10, 2018,  
11 the Department received a report that Tahja's apartment with Children's First was  
12 unlivable due to the condition of the home. (Id.). Furniture in the home was  
13 overturned, a window was broken, and trash was piled up in Tahja's own room. (Id.).  
14 On May 11, 2018 at about 3:00 a.m., the Las Vegas Metropolitan Police Department  
15 located one-month-old J.J.B. with two teenagers who were driving a car belonging  
16 to Tahja, but Tahja was not in the vehicle. (Id.). Tahja did not have a driver's license  
17 but purchased the car four days earlier anyway. (Id.). The Department responded to  
18 the scene and found that Tahja had also arrived. (Id.). Tahja attempted to explain  
19 away how J.J.B ended up with two unlicensed drivers, in her vehicle, in the early  
20 morning hours, as well as the domestic violence between her and Jonathan. (Id.).

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1 Due to Tahja's inability to recognize the safety concerns for J.J.B and  
2 minimization of the situation, the Department removed J.J.B. from her care (Id.).  
3 Tahja was dishonest with Children's First about J.J.B's removal knowing that it  
4 could cause her to lose her spot in the program. (AA, Vol II, part 1, p.000262).

5 Tahja's dishonesty continued and spread into her representations about her  
6 relationship with Jonathan and as the Department neared the creation of another in  
7 home safety plan, the Department learned their trust and belief that Tahja would  
8 protect L.L.S. from future harm was misplaced. (AA, Vol II, part 2, pp.000405-  
9 000406). Tahja represented she was no longer in a relationship with Jonathan and  
10 he did not know where she lived. (AA, Vol II, part 2, p.000405). In fact, the  
11 Department refiled a court report in J.J.B's case so as to prevent Jonathan from  
12 obtaining Tahja's address from court documents. (Id.).

13 On November 21, 2018, the Department found Jonathan hiding in Tahja's  
14 closet after she told the Department that she was too sick to attend her counseling  
15 sessions and was considering going to the hospital. (Id.). Despite the case manager  
16 physically seeing Jonathan in the closet and Tahja acknowledging it was him, Tahja  
17 later denied Jonathan was in the apartment and sent the case manager a picture of  
18 another male stating he was at her home so she could style his hair (despite being so  
19 sick that she could not attend her services and contemplated going to the hospital).  
20 (Id.). As a result of Tahja's dishonest behavior, failing to put the needs of her  
21 children first, and failing to meet her Conditions for Return, the Department was not

1 able to place L.L.S. in Tahja's care. (Id.).

2 On January 18, 2019 and February 4, 2019, Hearing Master Roys presided  
3 over the termination of parental rights hearing. (AA, Vol II, part 2, p.000453). At  
4 the time of the trial, L.L.S. had been in the Department's care for two years. (Id.).

5 During the trial, NIA Investigator Kacey Brunson testified as to the details  
6 surrounding L.L.S.'s removal and her Nevada Initial Assessment was admitted into  
7 evidence. (AA, Vol III, part 2, pp.000612-000626). Kacey's overall assessment was  
8 that Tahja was not motivated to parent. (AA, Vol III, part 2, p.000623 and RA p.6)

9 ERT Specialist Erika Barbour testified as to the abuse and/or neglect  
10 allegations related to J.J.B that occurred which were ultimately a barrier to Tahja  
11 meeting her conditions for return as to L.L.S. (AA, Vol III, part 2, pp.000628-  
12 000643).

13 Children's First service provider Vicky Hobson testified about Tahja's lack  
14 of participation and compliance with their program. (AA, Vol III, part 2, pp. 000650-  
15 000673). Tahja had a history of hiding unauthorized visitors in her apartment,  
16 allowed pets in the home in violation of the rules, allowed the pets to defecate  
17 throughout the home, and was later terminated from the program after  
18 having several opportunities to modify her behavior (AA, Vol III, part 2, pp. 000650-  
19 000663).

20 Permanency Specialist Marjory Barrett testified as to Tahja's long periods of  
21 non-compliance and lack of behavioral change punctuated by short periods of case

1 plan progress. (AA, Vol III, part 2, pp.000674-000714 and Vol IV, part 1,  
2 pp.000715-000779). Marjory expanded upon the concern of finding Jonathan in  
3 Tahja's closet in November 2018 and explained that Jonathan had yet to engage in  
4 services to address the domestic violence between him and Tahja. (AA, Vol IV, part  
5 1, p,000726). Tahja and Jonathan had not identified their triggers for domestic  
6 violence and Tahja's misrepresentation of their relationship status prevented  
7 Marjory from implementing an in-home safety plan at that time. (Id.). Additionally,  
8 Marjory testified that at a home visit one to two weeks prior to the trial, there was  
9 dog feces on the carpet scattered throughout Tahja's home causing an environmental  
10 safety concern for young children. (AA, Vol IV, part 1, p.000755).

11 Permanency Supervisor Jennifer Erbes testified as to her own interactions  
12 with Tahja. (AA, Vol IV, part 2, pp. 000833-000882). For the last year, Jennifer has  
13 repeatedly had the same conversations with Tahja regarding the need for Tahja to  
14 recognize threats, set aside her own needs for the needs of her children, understand  
15 how her behavior impacts her children, and how to meet the expectations for placing  
16 L.L.S. back in her care. (AA, Vol IV, part 2, p.000852). Jennifer expressed to Tahja  
17 that she would need to be open and honest with the Department about what is going  
18 on in her life for the Department to support her and the children effectively. (Id.).

19 Towards the latter half of 2018, Jennifer met with Tahja and discussed the  
20 conditions for return and again the possibility of an implementation of an in-home  
21 safety plan. (AA, Vol IV, part 2, pp.000842-000844). While Jennifer was trying to

1 understand the schedule of Tahja's home as is necessary to implement such a plan,  
2 Tahja confirmed she was not in a relationship with Jonathan and that he did not know  
3 where she lived. (AA, Vol IV, part 2, pp.000849-000850). It was important for the  
4 Department to have an honest understanding of Tahja's relationship with Jonathan  
5 because of, "their volatility, really understanding their relationship dynamic with  
6 their domestic violence and what that looks like for their relationship." (AA, Vol IV,  
7 part 2 p.000850).

8 Jennifer went on to explain that she has not seen any consistent behavioral  
9 change from Tahja in the last two years. (AA Vol IV, part 2, p.000855). Even if  
10 Tahja were to engage more consistently in counseling, participation in services does  
11 not necessarily indicate behavioral change. (Id.). Tahja needs to understand why she  
12 is in services and articulate what the services will be providing for her. (AA, Vol IV,  
13 part 2, p.000856). To date, Tahja does not know why she was in services and does  
14 not believe she needs to make any changes in her behavior. (AA, Vol IV, part 2,  
15 p.000855).

16 L.L.S.'s adoptive resource also testified as to the bond her and her family has  
17 with L.L.S. and J.J.B. who is also in their home. (AA, Vol IV, part 1, pp.000783-  
18 000820). L.L.S. has become integrated into their home and they are committed to  
19 providing for her on-gong therapeutic needs. (AA, Vol IV, part 1, p.000797).  
20 L.L.S.'s behavior has improved significantly since her placement with her adoptive  
21 resource as they provide the structure and routine L.L.S. needs. The adoptive

1 resource confirmed Tahja's attendance at visitation was sporadic and that she missed  
2 her visit with L.L.S. immediately preceding the start of the Termination of Parental  
3 Rights hearing. (AA, Vol IV, part 1, p.000807).

4 Even though L.L.S. has been out of the home for approximately two years,  
5 which triggered the presumptions under NRS 128.109, Tahja did not present any  
6 evidence in an attempt to rebut the presumptions. (AA, Vol IV, part 2, p.000882).

7 Based on the testimony of the witness, exhibits and pleadings and minutes of  
8 which Hearing Master Roys took judicial notice, Hearing Master Roys determined  
9 it is in L.L.S.'s best interest to terminate Tahja's parental rights and the parental fault  
10 grounds of neglect, failure of parental adjustment, and token efforts. (AA, Vol III,  
11 part 1, pp.000518-000523).

12 On March 29, 2019 Presiding District Court Judge Bryce C. Duckworth  
13 affirmed Hearing Master Roys' findings and recommendations after fully reviewing  
14 the entirety of the proceedings and the evidence admitted at trial. (AA, Vol III, part  
15 1, pp.000481-000508). At the objection hearing on April 24, 2019, L.L.S.'s counsel  
16 took no position, made no arguments, and did not submit a joinder, nor an opposition  
17 to Tahja's objection, or his own objection to Hearing Master Roys' findings and  
18 recommendation. (AA, Vol III, part 1, pp.000482).

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## SUMMARY OF ARGUMENT

The District Court did not violate Tahja's constitutional rights by allowing a hearing master to preside over Tahja's termination of parental rights hearing. NRS 432B defines "courts" to include judges and masters. Therefore, when NRS 432B.5091 refers to "courts" it is referring to both judges and masters. Beyond the plain language of the statute, the legislative history also indicates the legislature contemplated masters presiding over termination of parental rights proceedings prior to enacting NRS 432B.5901. Additionally, Tahja was afforded equal protection under the law when a hearing master presided over her termination of parental rights hearing because hearing masters preside over several other civil cases and because the District Court correctly followed the procedure outlined for judicial review prior to accepting a hearing master's recommendations terminating Tahja's parental rights as order of the court.

The District Court did not err in allowing the Department to file a Petition when Tahja turned over her child into protective custody and refused to accept assistance in finding an alternative solution. NRS 432B does not require the Department to enter into a voluntary agreement with a parent to care for their child when they are no longer able to do so. As such, the Department correctly filed a Petition when it identified several impending danger threats as to Tahja and L.L.S. and identified L.L.S. as a child in need of protection.

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1 Furthermore, the District Court correctly found there was substantial evidence  
2 to show parental fault existed to terminate Tahja's parental rights. L.L.S. only  
3 returned to Tahja's care for one month before the in-home safety plan failed. Every  
4 other time the Department attempted to return L.L.S. to Tahja's care, the plan failed  
5 because of Tahja's inability to prioritize Tahja's needs over her own.

6 Lastly, the District Court correctly found there was substantial evidence to  
7 show the best interest of L.L.S. would be served by terminating Tahja's parental  
8 rights. L.L.S. has become accustomed and bonded to her adoptive resource, where  
9 she resides with her brother, J.J.B. L.L.S.'s adoptive resource is committed to  
10 providing for L.L.S. and meeting her long term emotional and medical needs. Any  
11 reliance of the birth of Tahja's second (or even third child) to delay the permanency  
12 for L.L.S. would result in absurd result, especially given that there is no evidence  
13 that Tahja is near reunification with her other children.

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*1. Hearing Master Holly Roys presided over the termination of parental rights hearing in accordance with NRS 432B.5901.*

Except as otherwise provided in this section, the juvenile court or the chief judge of the judicial district may appoint any person to act as a master of the juvenile court if the person is qualified by previous experience, training and demonstrated interest in the welfare of children to act as a master of the juvenile court.

NRS 432B governs the adjudication of matters concerning the abuse or neglect of children. The juvenile court has exclusive jurisdiction in NRS 432B proceedings. *In re A.G.*, 129 Nev. 125, 131 (2013) (citing NRS 62A.180 and 432B.410 to support conclusion that the juvenile court has exclusive jurisdiction in

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1 proceedings brought pursuant to NRS 432B). The juvenile court encompasses judges  
2 and masters. NRS 432B.050<sup>2</sup> and NRS 62A.180.<sup>3</sup>

3 In 2018, the Nevada Legislature enacted NRS 432B.5901 which permits an  
4 agency that provides child welfare services to file a motion for the termination of  
5 parental rights as part of the NRS 432B proceedings.<sup>4</sup> Prior to this enactment, an  
6 agency would file a separate petition to terminate parental rights pursuant to NRS  
7 128, which would generate a separate case number and record. NRS 432B.5901's  
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10 <sup>2</sup> NRS 432B.050 "Court" defined. "Court" has the meaning ascribed to it  
in NRS 62A.180.

11 <sup>3</sup> NRS 62A.180 "Juvenile court" defined.

12 1. "Juvenile court" means each district judge who is assigned to serve as a  
judge of the juvenile court pursuant to NRS 62B.010 or court rule.

13 2. The term includes a master who is performing an act on behalf of the juvenile  
court if:

14 (a) The juvenile court delegates authority to the master to perform the act in  
accordance with the Constitution of the State of Nevada; and

15 (b) The master performs the act within the limits of the authority delegated to  
the master.

16 <sup>4</sup> NRS 432B.5901 Applicability of chapter 128 of NRS to proceedings concerning  
termination of parental rights; authority of agency which provides child welfare  
services to file motion for termination of parental rights.

17 1. The provisions of chapter 128 of NRS, to the extent they do not conflict with  
the provisions of NRS 432B.5901 to 432B.5908, inclusive, apply to all proceedings  
concerning the termination of parental rights that are commenced pursuant to this  
section by an agency which provides child welfare services.

18 2. If a child is determined to be a child in need of protection pursuant to NRS  
19 432B.550, an agency which provides child welfare services may, at any stage of a  
proceeding held pursuant to this chapter, file a motion for the termination of parental  
20 rights as part of the proceeding.  
21

1 enactment eliminated the need for independent action under NRS 128 when an  
2 pursues termination of parental rights.

3 Although NRS 432B.5901 incorporates NRS 128, it only does so to the extent  
4 that NRS 128 does not conflict with NRS 432B.5901 through 432B.5908, inclusive.  
5 Because NRS 432B.050 defines “court” to include judges and masters, when  
6 432B.5901 through 432B.5908 uses the term “court”, it refers to judges and master.  
7 432B.5901 through 432B.5908 references “court” thirty-one times, and as defined  
8 by 432B.050 refers to judges and masters in each reference. Furthermore, in an  
9 unpublished decision, this Court previously decided there is no statute within NRS  
10 128 providing for the referee or master. *In re K.J.B.*, No. 71515 (Nev., Jan 18, 2018).  
11 This conflicts with NRS 432B.5901 through NRS 432B.5908 which refers to the  
12 previously defined court a multitude of times. Thus the new legislation supersedes  
13 and incorporates the use of masters in the termination of parental rights hearings  
14 filed pursuant to NRS 432B.5901. Therefore, Hearing Master Roys presiding over  
15 the termination of parental rights proceeding was in line with NRS 432B.5901.

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1       2. *The legislature considered the use of hearing masters in*  
2       *termination of parental rights hearings when it enacted the new*  
3       *legislation.*

4       Even though the language of NRS 432B.5901 through NRS 432B.5908 is  
5       clear, a review of the legislative history supports interpretation of the statute using  
6       the plain language. Tahja's counsel incorrectly asserts that if a statute is clear, this  
7       Court will not consider legislative intent. "Statutory interpretation necessarily begins  
8       with consideration of the legislative history to uncover any indication of legislative  
9       intent." 2A Statutes and Statutory Construction, *supra* § 48:1, at 556 (internal  
10      quotation marks omitted), *A.J. v. Eight Judicial Dist. Court*, 394 P.3d 1209, 1213  
11      (Nev. 2017).

12      The legislature intended to permit masters to preside over termination of  
13      parental rights proceedings, when, after considering Assemblyman Ohrenschall's  
14      statement that such enactment would, "allow these proceedings to be handled by  
15      hearing masters in addition to District Court judges," it passed the new legislation.  
16      Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-Ninth  
17      Session, pp. 3-4 (May 19, 2017),  
18      [https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/1180.](https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/JUD/Final/1180.pdf)  
19      pdf., accessed on November 24, 2019. Because the statute is clear, and the legislative  
20      history considered that the new statute would permit the use of hearing masters in  
21      termination of parental rights hearings prior to enacting the statute, NRS 432B

1 permits the use of hearing masters in termination of parental rights hearings pursuant  
2 to NRS 432B.5901.

3 *3. In following the statutorily outlined procedure, Judge Duckworth*  
4 *protected Tahja's due process rights in considering her objection to*  
5 *the hearing master's findings, but ultimately correctly affirmed the*  
6 *findings and ordered the termination of her parental rights.*

7 While NRS 62B.020 allows for hearing masters in juvenile proceedings, and  
8 432B actions are juvenile proceedings, NRS 62B.030 enumerates a juvenile master's  
9 authorized power and duties:

- 10 1. The juvenile court may order a master of the juvenile court to:
  - 11 (a) Swear witnesses.
  - 12 (b) Take evidence.
  - 13 (c) Make findings of fact and recommendations.
  - 14 (d) Conduct all proceedings before the master of the juvenile court  
in the same manner as a district judge conducts proceedings in a District  
Court.
- 15 2. Not later than 10 days after the evidence before a master of the  
juvenile court is closed, the master shall file with the juvenile court:
  - 16 (a) All papers relating to the case;
  - 17 (b) Written findings of fact; and
  - 18 (c) Written recommendations.
- 19 3. A master of the juvenile court shall provide to the parent or guardian  
of the child, the attorney for the child, the district attorney, and any other  
person concerned, written notice of:
  - 20 (a) The master's findings of fact;
  - 21 (b) The master's recommendations;
  - (c) The right to object to the master's recommendations; and
  - (d) The right to request a hearing de novo before the juvenile court as  
provided in subsection 4.

///

1 NRS 62B.030(4) outlines the review process for the master's  
2 recommendations to allow the recommendations to become the order of the court, if  
3 appropriate. Pursuant thereto:

4 4. After reviewing the recommendations of a master of the juvenile  
5 court and any objection to the master's recommendations, the juvenile  
6 court shall:

7 (a) Approve the master's recommendations, in whole or in part,  
8 and order the recommended disposition;

9 (b) Reject the master's recommendations, in whole or in part, and  
10 order such relief as may be appropriate; or

11 (c) Direct a hearing de novo before the juvenile court if, not later  
12 than 5 days after the master provides notice of the master's  
13 recommendations, a person who is entitled to such notice files with the  
14 juvenile court a request for a hearing de novo before the juvenile court.

15 5. A recommendation of a master of the juvenile court is not effective  
16 until expressly approved by the juvenile court as evidenced by the  
17 signature of a judge of the juvenile court.

18 Only a District Court judge can make a dispositional decision in a matter.  
19 *Cosner v. Cosner*, 78 Nev. 242, 245, 371 P.2d 278, 279 (1962). A hearing master's  
20 recommendations are advisory, and the juvenile court is not obligated to adopt them.  
21 *In re A.B.*, 128 Nev. 764, 766, 291 P.3d 122, 127 (2012).

During the termination of parental rights hearing on January 18, 2019 and  
February 4, 2019, Hearing Master Roys swore in witnesses and took evidence from  
those witnesses when she heard testimony from four Department employees, a  
service provider who ultimately terminated Tahja from services due to lack of  
compliance, and L.L.S.'s adoptive resource. Hearing Master Roys also made  
findings of fact and recommendations and conducted the proceeding in a manner as

1 a district judge conducts proceedings in a District Court when she maintained the  
2 decorum in the courtroom and ruled on objections. Tahja has not contested any  
3 decisions Hearing Master Roys made during the termination of parental rights  
4 hearing.

5 On February 22, 2018, Hearing Master Roys issued an oral recommendation  
6 terminating Tahja's parental rights and reduced the same to writing on March 18,  
7 2019. On March 25, 2019, Tahja filed an objection to the same. Even though Tahja,  
8 through her counsel, filed an objection to Hearing Master Roys' factual findings, at  
9 no point did Tahja or her counsel file an objection to a hearing master presiding over  
10 her termination of parental rights hearing.

11 Prior to affirming Hearing Master Roys' recommendation to terminate  
12 Tahja's parental rights, Judge Duckworth reviewed the entirety of the trial  
13 proceedings and the evidence admitted at trial. Judge Duckworth also provided  
14 Tahja and her counsel with the opportunity to supplement their written pleadings  
15 with additional oral argument at an objection hearing, but they chose not to do so.  
16 Judge Duckworth approved Hearing Master Roys' findings and recommendations in  
17 their entirety and incorporated them into his own findings and order.

18 Therefore, by following the procedure proscribed by law, Judge Duckworth  
19 protected Tahja's due process and constitutional rights when he heard her objection,  
20 gave her an opportunity to supplement her record, but ultimately terminated her  
21 parental rights. As such, Tahja did not lose the right to have a District Court judge

1 hear the evidence and make an independent review and findings terminating her  
2 parental rights.

3 *4. Tahja was afforded equal protection under the law.*

4 A parent who faces termination of parental rights proceedings initiated under  
5 NRS 432B, a government action, is afforded equal rights, if not more rights, than  
6 that of a parent facing termination of parental rights pursuant to NRS 128, a private  
7 proceeding. Tahja's counsel attempts to argue that Tahja's classification as a litigant  
8 in juvenile proceedings is unfairly denying her ability to have a District Court judge  
9 preside over her hearing, unlike other "civil litigants" but fails to identify other "civil  
10 litigants." Civil litigants in involuntary commitment proceedings pursuant to NRS  
11 433A, probate of wills pursuant to NRS 136, temporary protective hearings pursuant  
12 to NRS 33, and guardianship hearings pursuant to NRS 159 are all civil litigants who  
13 appear before hearing masters. Furthermore, the Department initiated a case  
14 pursuant to NRS 432B by filing a Petition after Tahja turned over custody of L.L.S.  
15 to the Department and subsequently the dependency court. After Tahja admitted to  
16 the Petition, the dependency court determined L.L.S. was a child in need of  
17 protection, and adopted a plan for reunification, the dependency court held several  
18 review hearings and status check hearings to monitor Tahja's progress in meeting,  
19 or failing to meet, her case plan goals. These hearings are in accordance with the  
20 statutory guidelines provided for in NRS 432B.470 through 432B.590 inclusive,  
21 which govern Hearings on Need of Protection for Child. There are no such related



1 statutory provisions in NRS 128. Considering the statutory obligations for evaluation  
2 of a parent's progress and independent review of a hearing master's findings and  
3 recommendations, the juvenile court assures Tahja was afforded several layers of  
4 protection of her due process rights prior to reaching the determination that  
5 termination of her parental rights was appropriate in this case.

6 **B. The Department acted in accordance with statute when it filed a**  
7 **Petition alleging L.L.S. was a child in need of protection when Tahja was no**  
8 **longer able to care for her.**

9 The Department was not obligated to enter into an agreement with Tahja when  
10 Tahja refused to explore services for assistance in caring for L.L.S. and opted to turn  
11 L.L.S.'s care over to the Department. NRS 432B does not assert an affirmative duty  
12 upon the Department to enter into an agreement with a parent who wants to place  
13 their child in the care of an agency. NRS 432B.360(1) provides:

14 A parent or guardian of a child who is in need of protection *may place*  
15 *the child* with a public agency authorized to care for children or a  
16 private institution or agency licensed by the Department of Health and  
Human Services or a county whose population is 100,000 or more to  
care for such children if:

17 (a) Efforts to keep the child in his or her own home have failed;  
and

18 (b) The parents or guardian *and the agency or institution*  
19 *voluntarily sign a written agreement for placement of the child* which  
sets forth the rights and responsibilities of each of the parties to the  
agreement. Emphasis added.

20 ///

21 ///

1 Here, the Department did not voluntarily sign a written agreement for  
2 placement of L.L.S. in the Department's care. Because the statute is not compulsory  
3 and is instead permissive, the Department was not required to enter into a voluntary  
4 agreement with Tahja. The Department warned Tahja of the consequences of  
5 placing L.L.S. in protective custody, but Tahja insisted on turning her over to the  
6 Department. Additionally, the Department identified services available to Tahja to  
7 help her care for L.L.S. so as to prevent L.L.S.'s removal from her care, but Tahja  
8 declined the help and thus appeared to be unmotivated to parent her daughter.

9 Even if the Department had voluntarily entered into an agreement to allow  
10 Tahja to place L.L.S. in protective custody, and because Tahja has remained  
11 unmotivated to parent, the Department would not have been able to return L.L.S. to  
12 Tahja's care. The remaining sections of NRS 432B.360 provide:

13 2. If a child is placed with an agency or institution pursuant to  
14 subsection 1, the parent or guardian shall:

15 (a) If able, contribute to the support of the child during the  
16 temporary placement;

17 (b) Inform the agency or institution of any change in the address or  
18 circumstances of the parent or guardian; and

19 (c) Meet with a representative of the agency or institution and  
20 participate in developing and carrying out a plan for the possible return  
21 of the child to the custody of the parent or guardian, the placement of  
the child with a relative or the eventual adoption of the child.

3. A parent or guardian who voluntarily agrees to place a child  
with an agency or institution pursuant to subsection 1 is entitled to have  
the child returned to the physical custody of the parent or guardian  
within 48 hours of a written request to that agency or institution. If that  
agency or institution determines that it would be detrimental to the best  
interests of the child to return the child to the custody of the parent or  
guardian, it shall cause a petition to be filed pursuant to NRS 432B.490.

1           4. If the child has remained in temporary placement for 6  
2 consecutive months, the agency or institution shall:

3           (a) Immediately return the child to the physical custody of the  
4 parent or guardian; or

5           (b) Cause a petition to be filed pursuant to NRS 432B.490.

6           Given Tahja's continued lack of motivation, historical inability to follow rules  
7 and failure to reunify with L.L.S., even if, arguendo, the Department had entered  
8 into an agreement, after six months of L.L.S. remaining in protective custody, the  
9 Department would have had to file a Petition pursuant to NRS 432B.360(4). The  
10 Department identified three separate impending danger threats during its initial  
11 assessment. Tahja's counsel attempts to minimize the safety concerns regarding  
12 L.L.S. remaining in Tahja's care as a lack of resources; however, the Department  
13 and the dependency court noted Tahja's lack of motivation to parent was driving  
14 Tahja's poor decision making. Tahja could not follow the rules of her service  
15 providers, the Department's rules during the short month L.L.S. was with Tahja on  
16 an in-home plan, and Tahja continued to be dishonest with the Department and the  
17 dependency court when she was well aware that it was her own actions that  
18 sabotaged reunification with her daughter.

19           Tahja's termination of parental rights hearing commenced two years after  
20 Tahja relinquished L.L.S.'s care to the Department. NRS 128.109 provides:

21           ///

          ///

          ///

1 1. If a child has been placed outside of his or her home pursuant to  
2 chapter 432B of NRS, the following provisions must be applied to  
determine the conduct of the parent:

3 (a) If the child has resided outside of his or her home pursuant to  
4 that placement for 14 months of any 20 consecutive months, it must be  
presumed that the parent or parents have demonstrated only token  
5 efforts to care for the child as set forth in subparagraph (6) of paragraph  
(b) of subsection 1 of NRS 128.105.

6 (b) If the parent or parents fail to comply substantially with the  
7 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  
8 of failure of parental adjustment as set forth in subparagraph (4) of  
paragraph (b) of subsection 1 of NRS 128.105.

9 2. If a child has been placed outside of his or her home pursuant  
10 to chapter 432B of NRS and has resided outside of his or her home  
pursuant to that placement for 14 months of any 20 consecutive months,  
the best interests of the child must be presumed to be served by the  
termination of parental rights.

11 3. The presumptions specified in subsections 1 and 2 must not be  
12 overcome or otherwise affected by evidence of failure of the State to  
provide services to the family. As such, the same statutory  
13 presumptions that existed at the time of her termination of parental  
rights hearing would have existed if her termination of parental rights  
hearing commenced eighteen months after the filing of the Petition.

14 Because the presumptions trigger after fourteen months of a child remaining  
15 in care and six months after a case plan is accepted, and Tahja's termination of  
16 parental rights hearing was twenty-four months after L.L.S. resided outside her  
17 home, delaying the filing of the Petition by six months would not have changed the  
18 triggering of the presumptions. Once the presumptions are triggered, the burden  
19 shifts to Tahja to rebut the by a preponderance of the evidence. *In re J.D.N.*, 128  
20 Nev. 462, 471, 283 P.3d 842, 848 (2012). Tahja presented no evidence to dispute  
21 any of the testimony by any of the witnesses.

**C. The District Court correctly found that there was substantial evidence of Tahja's parental fault.**

Tahja's impulsivity and inability to put L.L.S.'s needs above her own has prevented her from providing L.L.S. with proper care. L.L.S. has remained in foster care because of Tahja's choices and Tahja has failed to provide any support for L.L.S. for the last two years.

The Department is unable to implement an in-home safety plan because, among other reasons, Tahja has chosen to be dishonest about her relationship with Jonathan, a person who the court found committed an act of domestic violence against her and is required, but has failed, to address domestic violence as part of his case plan. On one hand, after a failed in-home safety plan, and two additional failed attempts to safety plan, Tahja is aware of what she needs to do in order to have L.L.S. returned to her care. On the other hand, Tahja is also very aware of what she needs to do to sabotage the Department's efforts to support her and her child and unfortunately, she continues to make efforts towards the latter instead of the former.

Tahja does not have a home which is safe for L.L.S.'s placement. During the Department's most recent home visit, she found dog feces on the carpet throughout the home. Throughout the case, Tahja has had difficulty maintaining a home free from environmental hazards. Additionally, the Department is not aware of the home dynamics because Tahja has not been honest about the visitors in her home,

1 including Jonathan, who is a person with whom she has a violent history. As such,  
2 the Department is still unable to place L.L.S. in Tahja's care.

3 Additionally, Tahja's case plan was adopted by the court in March 2017,  
4 triggering the presumption under 128.109 in that the court must find failure of  
5 parental adjustment if a parent failed to substantially comply with their case plan  
6 within six months. On November 20, 2018, Tahja indicated she was choosing not  
7 to go to therapy because she was sick, but only two hours later, Marjory found  
8 Jonathan hiding in her closet. This incident exemplifies Tahja's behavior towards  
9 her daughter and the Department and her indifference in adjusting her behavior so  
10 that it is safe for L.L.S. to be placed in her care. L.L.S. needed her mother to engage  
11 in services to learn how to become a safe and stable parent. Instead, Tahja chose  
12 not to put L.L.S.'s needs first. It is this repeated choice of putting what L.L.S.'s  
13 needs on the backburner that demonstrates she had not substantially remedied the  
14 situation that caused L.L.S. to be placed in protective custody.

15 In fact, Tahja was less equipped to meet L.L.S.'s needs at the time of the  
16 termination of parental rights hearing than she was at the time of removal. Tahja  
17 has demonstrated that she is not able to maintain safe housing, has minimized the  
18 domestic violence in her relationship with her son's father, and was kicked out of a  
19 program designed to provide her resource support.

20 Tahja has a pattern of taking two steps forward and four steps back in her  
21 efforts to reunify with L.L.S. At the very onset of the case, Tahja declined the

1 Department's assistance to prevent L.L.S.'s removal. The NIA investigator  
2 explained to Tahja the negative impact her decision to place L.L.S. in the  
3 Department's care would have on L.L.S. Instead of making every effort possible to  
4 keep her child in her care, she willingly relinquished L.L.S.'s care and support to  
5 the Department.

6 Throughout the case, Tahja has demonstrated a disregard for how her  
7 behavior impacts L.L.S. When Tahja was involved in an altercation with her safety  
8 plan support, she disregarded the impact another disruption would have on her  
9 daughter. When her behavior led to her termination from the Children's First  
10 program and the loss of her subsidized housing, Tahja failed to modify her behavior  
11 so that the Department could create an in-home safety plan. When Tahja was  
12 dishonest about her relationship with Jonathan, the Department was unable to  
13 sufficiently support her and L.L.S. with an in-home safety plan. During all of these  
14 poor choices, it was L.L.S. who suffered. Even after two years of seeing how her  
15 behavior and poor choices have caused her daughter to remain in care, Tahja  
16 remains obstinate.

17 Additionally, L.L.S. has been out of her home for two years, thereby  
18 triggering the presumption under NRS 128.109. Tahja failed to present any  
19 evidence to rebut the presumption that she has failed to prevent the neglect of L.L.S.  
20 As such, the District Court correctly found there were sufficient parental fault  
21 grounds to terminate Tahja's parental rights.

1           **D. The District Court correctly found there was clear and convincing**  
2 **evidence to show L.L.S.'s best interest would be served by the termination of**  
3 **parental rights.**

4           L.L.S. resides with her half-sibling, J.J.B. and there is no indication that  
5 terminating Tahja's parental rights as to L.L.S. will have a negative impact on  
6 L.L.S.'s relationship with her brother. Termination and adoption no longer severs  
7 the sibling ties. This Court has previously found that the sibling presumption does  
8 not disappear once a child is adopted. *Mulkern v. Eighth Judicial Dist. Court in &*  
9 *for Cty. of Clark*, 134 Nev. 684, 687, 429 P.3d 277, 279 (2018). As such, even if  
10 L.L.S. is adopted prior to J.J.B.'s adoption<sup>5</sup> (or reunification if such were to occur),  
11 J.J.B. and L.L.S. will remain siblings. There are other legal remedies, such as the  
12 implementation of a sibling visitation order, that can ensure the children maintain a  
13 relationship, without further delaying L.L.S.'s permanency.

14           Even if, *arguendo*, L.L.S. and J.J.B.'s sibling presumption did not exist post  
15 adoption, delaying the permanency for one child because a parent had another child  
16 after their first child was already in protective custody, would create an absurd result.  
17 The Adoptions and Safe Families Act of 1997 (ASFA) strongly promoted timely

---

18  
19  
20 <sup>5</sup> At the time of the Termination of Parental Rights Hearing, J.J.B.'s permanency  
21 goal in his case was reunification with a concurrent goal of adoption. J.J.B.'s  
permanency goal has since changed to adoption with a concurrent goal of  
reunification.



1 adoptions of children who cannot return safely to their homes. Public Law 105-89  
2 (as codified 42 U.S.C.A. § 671(a)(15)(C)). To ignore federal regulations and federal  
3 timelines for one child because a parent could possibly maybe someday in the  
4 unknown future reunify with another child, would be to encourage parents to have  
5 another child when they are nearing termination of parental rights proceedings on  
6 their first child. If a parent, while being unable to reunify with one child, has another  
7 child, there is a greater likelihood the subsequent child would also be a child in need  
8 of protection. Encouraging parents who are actively involved in the dependency  
9 system to have more children to extend their timeline to avoid facing termination of  
10 parental rights, would result in a significant increase in the number of children in the  
11 child welfare system.<sup>6</sup>

12 Furthermore, Tahja is a neglectful parent and not safe to parent L.L.S. Tahja  
13 demonstrated a lack of motivation to parent her children and cannot put aside her  
14 own needs in order to prevent her children from remaining in care. Although the  
15 argument is not fully developed, it appears Tahja's counsel is attempting to argue  
16 that because the District Court did not find the parental fault ground of unfitness,  
17 Tahja is a fit parent. This conclusion flies in the face of the statutory provisions  
18 outlining the parental fault grounds for the termination of parental rights. NRS  
19 128.105 outlines eight different parental fault grounds, only one of which is unfitness

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21 <sup>6</sup> Tahja has a third child in protective custody who was born in May 2019.

1 of the parent.<sup>7</sup> The District Court found that the parental fault grounds of neglect,  
2 failure of parental adjustment, and token efforts applied to Tahja's behaviors.

3 Tahja has only maintained a level of engagement for a short period of time  
4 throughout the life of the case. Tahja only parented L.L.S. for approximately four  
5

6  
7 <sup>7</sup> NRS 128.105 Grounds for terminating parental rights: Considerations;  
required findings.

8 1. The primary consideration in any proceeding to terminate parental rights must  
9 be whether the best interests of the child will be served by the termination. An order  
10 of the court for the termination of parental rights must be made in light of the  
considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and  
based on evidence and include a finding that:

11 (a) The best interests of the child would be served by the termination of parental  
rights; and

12 (b) The conduct of the parent or parents was the basis for a finding made  
pursuant to subsection 3 of NRS 432B.393 or demonstrated at least one of the  
following:

- 13 (1) Abandonment of the child;  
14 (2) Neglect of the child;  
15 (3) Unfitness of the parent;  
16 (4) Failure of parental adjustment;  
17 (5) Risk of serious physical, mental or emotional injury to the child if the  
child were returned to, or remains in, the home of his or her parent or parents;  
18 (6) Only token efforts by the parent or parents:  
19 (I) To support or communicate with the child;  
20 (II) To prevent neglect of the child;  
21 (III) To avoid being an unfit parent; or  
(IV) To eliminate the risk of serious physical, mental or emotional  
injury to the child;

(7) With respect to termination of the parental rights of one parent, the  
abandonment by that parent; or

(8) The child was conceived as a result of a sexual assault for which the  
natural parent was convicted.

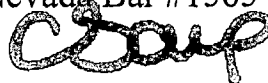
1 months out her two-and-a-half year old life. Tahja has not taken full advantage of  
2 the opportunities to bond and visit with L.L.S. or utilize the Department's assistance  
3 in learning how not to be neglectful parent. Tahja's counsel makes a sweeping  
4 generalization regarding the testimony and argues that all of the witnesses testified  
5 that Tahja is appropriate, but fails to site to one place in the record. While Tahja may  
6 be bonded to L.L.S, L.L.S. is likewise bonded to her adoptive resource who has cared  
7 for L.L.S. when Tahja failed to do so. It is in the home of her adoptive resource  
8 where L.L.S. is integrated into the family and resides with her sibling. As such, the  
9 District Court correctly found that there were sufficient parental fault grounds to  
10 terminate Tahja's parental rights and it was in L.L.S's best interest to do so.

### 11 CONCLUSION

12 For all the foregoing reasons, the Department respectfully requests the Nevada  
13 Supreme Court affirm the decision of the Honorable Judge Bryce Duckworth in  
14 terminating Tahja Lujan's parental rights as to L.L.S.

15 DATED this 26th day of November, 2019.

16 STEVEN B. WOLFSON  
17 Clark County District Attorney  
18 Nevada Bar #1565



---

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## CERTIFICATE OF COMPLIANCE

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

7 2. I further certify that this brief complies with the page or type volume  
8 limitations of NRAP 32(a)(7) because it is proportionately spaced, has a typeface of  
9 14 points or more and contains 7,241 words.

10 3. Finally, I hereby certify that I have read this brief, and to the best of my  
11 knowledge, information and belief, it is not frivolous or interposed for any improper  
12 purpose. I further certify that this brief complies with all applicable Nevada Rules  
13 of Appellate Procedure, in particular NRAP 28(e) which requires every assertion in  
14 the brief regarding matters in the record to be supported by a reference to the page  
15 and volume number, if any, of the transcript or appendix where the matter relied on  
16 is to be found.

17 ///

18 ///

19 ///

20 ///

21 ///

1 4. I understand that I may be subject to sanctions in the event that the  
2 accompanying brief is not in conformity with the requirements of the Nevada Rules  
3 of Appellate Procedure.

4 Dated this 26th day of November, 2019.

5   
6

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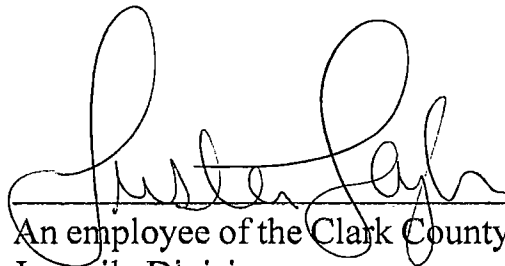
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the Clark County District Attorney's Office, Juvenile Division, and that on the 26th day of November 2019, I served by electronic means to the following:

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