

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

IN THE MATTER OF THE  
PARENTAL RIGHTS AS TO:

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

Minor Children,

\_\_\_\_\_ /

JACQUELINE GUERRERO,

Appellant,

v.

WASHOE COUNTY DEPARTMENT  
OF SOCIAL SERVICES,

Respondent.

\_\_\_\_\_ /

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

**RESPONDENT'S ANSWERING BRIEF**

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## **I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Whether the district court properly found parental fault pursuant to Nevada Revised Statutes (“NRS”) 128.105(1)(b) and 128.109(1)(a) when Ms. Guerrero failed to obtain and maintain income, failed to obtain and maintain a safe and stable home, and failed to address her severe mental and emotional illnesses;

2. Whether the district court properly found it was in the best interests of R.T., K.G-T., N.G-T., and E.H-T. to terminate Ms. Guerrero’s parental rights pursuant to NRS 128.105(1)(a) and 128.109(2) when the four children are flourishing in an adoptive placement where all of their needs are met, where they are cared for by a mentally stable individual who is capable of following through with tasks to effectively provide for them, where they are treated and loved like family, and testimony proved it would be detrimental to remove them from this adoptive home; and

3. Whether the district court properly did not explicitly find “substantial harm” when no such finding is required pursuant to NRS 128.105(1)(b) and there is substantial evidence supporting a finding that R.T., K.H-T., N.H-T., and E.H-T. are placed at risk of substantial harm if returned to Ms. Guerrero’s care.

## **II. STATEMENT OF THE CASE**

This is an appeal from a Second Judicial District Court Order terminating the parental rights of Jacqueline Guerrero (“Ms. Guerrero”) as to the following

four children: R.T.: born June 15, 2007; K.G-T.: born February 13, 2010; N.H-T.: born June 29, 2011; and E.H-T.: born January 1, 2014.<sup>1</sup> Joint Appendix Volume I 1, 14.

The trial began August 31, 2015, and concluded September 15, 2015. (JA Volumes II – VII; Supplemental Appendix Volumes I-VII). The court directed the parties to submit written briefs in lieu of closing arguments. I JA 29-137.

On March 21, 2016, the district court ordered termination of Ms. Guerrero’s parental rights to R.T., K.G-T., N.G-T., and E.H-T. I JA 138-151. The district court expressly incorporated and adopted “the summary of proceeding in this case up until the time of trial” and the “summary of the testimony of some of the witnesses at trial” as set forth in Petitioner’s Trial Brief, specifically pages 3-26. I JA 140, 142; I JA 29-75. The trial court further found “the testimony of the witnesses called by the Petitioner were convincing.” I JA 142.

The district court found R.T., K.G-T., and N.G-T. were “placed outside of their home in the care and custody of [WCDSS] in excess of 28 of the last 28 consecutive months.” I JA 147-148. Thus, “[t]he presumptions in NRS 128.109(1)(a) and 128.109(2) apply” and were not overcome by Ms. Guerrero. I JA 148. Consequently, “[p]ursuant to NRS 128.109(1)(a), it is presumed Ms.

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<sup>1</sup> On August 28, 2016, the children’s father, Robert Hunt-Taylor, waived his right to participate in the termination trial and agreed to relinquish his parental rights to the children. I JA 26-28.

Guerrero has demonstrated only token efforts to care for [R.T., K.G-T., and N.G-T.]” and it is in the best interest of R.T., K.G-T., and N.G-T. that Ms. Guerrero’s parental rights are terminated<sup>2</sup>. I JA 148.

In addition, the district court found that WCDSS proved, by clear and convincing evidence, parental fault due to Ms. Guerrero’s failure to: obtain stable income, obtain a stable residence, and address her severe emotional and mental illnesses despite the provision of reasonable efforts by WCDSS. I JA 148-150. The district court also found that termination of Ms. Guerrero’s parental rights was in the best interest of all four children. I JA 138-150.

### **III. STATEMENT OF THE FACTS**

R.T., K.G-T., and N.G-T. were removed from parental custody by WCDSS on April 19, 2013. II JA 290. E.H-T. was subsequently removed from parental custody by WCDSS on September 11, 2014. II JA 371

**Removal of R.T., K.G-T., and N.G-T.:** Pursuant to NRS 432B.470, a protective custody hearing was conducted on April 24, 2013, as to R.T., K.G-T., and N.G-T. I SA 1. The district court found continuation in the home was contrary to the welfare of R.T., K.G-T., and N.G-T., and it was in their best interest to be placed outside of their home due to Ms. Guerrero’s inability to provide

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<sup>2</sup> Because E.H-T. was not in the care and custody of WCDSS in excess of 14 months at the time of the termination trial, the presumptions pursuant to NRS 128.109 did not apply.

adequate shelter and the educational neglect of R.T. (R.T. had missed in excess of forty-five (45) days of school and presented with untreated speech and language delays). II JA 279, 290, 337; I SA 1. The evidence presented at trial demonstrated, at the time R.T., K.G-T., and N.H-T. were removed, Ms. Guerrero and Mr. Hunt-Taylor were being evicted from their motel room due to nonpayment of rent, the family had no alternative housing, and the family could not provide for the basic needs of the children. II JA 290, 292, 295, 294, 339-340. While the family did receive \$531.00 monthly from Temporary Assistance for Needy Families (“TANF”), the family failed to budget the benefits appropriately to ensure the rent was paid. Id. Furthermore, all housing resources had been exhausted. Id.

K.G-T., and N.G-T. I SA 3-8. On June 20, 2013, the dependency court found R.T., K.G-T., and N.G-T. were children in need of protection pursuant to NRS 432B.330(2)(b) as Ms. Guerrero, a person responsible for the welfare of the children, failed, although financially able to do so or had been offered financial or other means to do so, to provide for the needs of the children. I SA 9-10.

The case was assigned to Rocio Lopez, WCDSS permanency social worker, on April 30, 2013. III JA 592. The case was randomized into the SAFE-FC program, which is a more intensive program focusing on reunification that provides additional services and funding through Children’s Cabinet to effectuate

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reunification.<sup>3</sup> III JA 590. A Children’s Cabinet case manager was also assigned who worked collaboratively with the family and social worker to assist in reunification. III JA 594. Also, the social worker met with the parent once a week and reviewed the Case Plan and Service Agreement (“CPSA”) once every three months. III JA 595; IV JA 767.

**Removal of E.H-T.:** On January 1, 2014, Ms. Guerrero gave birth to E.H-T. II JA 348, 373. R.T., K.G-T., and N.G-T. were still in the care and custody of WCDSS at that time. Id.

While WCDSS did not remove E.H-T. from parental custody and care until September 11, 2014, WCDSS was involved in two separate investigations regarding E.H-T.’s safety on January 2, 2014, and July 11, 2014. II JA 344, 346-347, 349-351, 353, 359; 372, 373, 375-378, 381, 391, 451; III JA 636; III SA 250-260; IV SA 261-269; V SA 331-345. The investigations were based upon the following: Ms. Guerrero being evicted from her apartment; Ms. Guerrero’s inability to provide for the basic needs of E.H-T.; unsanitary, inappropriate, and unsafe housing, including residing in a home which did not have up-to-code

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<sup>3</sup> Ms. Lopez testified the SAFE-FC program is “part of a research project to determine if more intensive services, more collaboration, providing more services, meeting with parents more, changing the way that we meet with the parents, the way we talk to the parents, if any of the things would reunify the children with their parent a lot faster.” III JA 593.

plumbing; and domestic violence. Id. WCDSS continued to provide services to Ms. Guerrero in an attempt to keep E.H-T. in her custody. Id.

From August to September of 2014, Denise Tyre, WCDSS assessment worker, was assigned to the case related to the newborn E.H-T. Id. On September 11, 2014, Ms. Tyre attempted to bring diapers to Ms. Guerrero at the residential address provided by Ms. Guerrero – the Red Lion Motel in Reno, Nevada. II JA 403, 404, 419. Ms. Tyre testified she found Ms. Guerrero’s residence to be unsanitary and uninhabitable. II JA 410; V SA 346-348; VI SA 349-359. Ms. Tyre observed dog feces and stains from animal urine on the floor, soiled diapers on the floor, a strong odor of urine and feces, and choking hazards for an infant child, such as E.H-T. Id. On September 11, 2014, given the condition of Ms. Guerrero’s residence and the safety risks posed to E.H-T., E.H-T. was removed from parental custody. II JA 419; I SA 55-100, 157-164, 165-168; II SA 172-174, 182-185, 188-189.

On September 16, 2014, a contested protective custody hearing occurred pursuant to NRS 432B.470. I SA 55-100. At the hearing, the district court found Ms. Guerrero resided at the Red Lion Motel, not the Stalker family home<sup>4</sup> as alleged by the Appellant. Id. This ruling was not appealed. Id. The district court

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<sup>4</sup> Appellant argues in the Opening Brief that Ms. Guerrero resided with the Stalkers, an acquaintance of Ms. Guerrero; however, no credible evidence was provided at the termination trial to support this argument.

further found continuation in the home was contrary to the welfare of E.H-T. and it was in his best interest to remain outside of the home due to the unsafe and unsanitary condition of Ms. Guerrero's residence, the unaddressed mental health of Ms. Guerrero, and Ms. Guerrero's inability to meet the basic needs of E.H-T. Id.

On September 26, 2014, WCDSS filed a Petition for Hearing to maintain custody of E.H-T. Id. On November 13, 2014, Ms. Guerrero was found to be a person responsible for the welfare of E.H-T. and to have subjected him to neglect in accordance with NRS 432B.330(1)(b). Id. The court also found Ms. Guerrero resided at the Red Lion. Id. Again, that ruling was not appealed. Id.

In October of 2014, E.H-T.'s case was assigned to Malia Seronio ("Ms. Seronio"), WCDSS permanency social worker. V JA 1176. E.H-T's case was also randomized in the SAFE-FC case group. Id.

**Case Plans and Service Agreements:** Throughout the related dependency case, as testified by Ms. Lopez and Ms. Seronio, the outstanding safety concerns which prevented reunification included lack of income, lack of safe and stable housing, lack of motivation to take the necessary steps to parent and provide for the children, domestic violence, and unaddressed mental and emotional illnesses. III JA 601-612, 619; V JA 1178, 1182-1183; II SA 190-247.

To effectuate reunification, WCDSS created a CPSA. II SA 190-247. The CPSA identified goals and objectives related to the aforementioned safety concerns

and assigned tasks and services associated with completing these goals. Id. As testified to by Ms. Lopez and Ms. Seronio, the CPSA was reviewed every three months. Id. Ms. Lopez and Ms. Seronio further testified, the identified goals and objectives in Ms. Guerrero's CPSA included: addressing her inability to provide for the children's basic needs, obtaining safe and stable housing, obtaining income, addressing her lack of motivation, and addressing her severe mental and emotional illnesses. Id.

The services offered to Ms. Guerrero by WCDSS and the Children's Cabinet, as testified by Ms. Lopez, Ms. Seronio, and Cassondra Pasley, Children's Cabinet Supervisor, Rocky Mateo, Children's Cabinet Worker, to accomplish the goals and objectives in the CPSA were extensive and included, but were not limited to, housing assistance, including referrals and assistance with Reno Housing Authority, Section 8 Housing, and the Low Income Housing Fund, budgeting assistance, bus passes, and provision of funds for temporary housing. II JA 349-350; III JA 611-612; V JA 998-1001, 1007-1010, 1015, 1020, 1023, 1185, 1186, 1190, 1192, 1198-1203, 1211; VI JA 1246, 1303, 1316; I SA 1-100. Also, assistance with resume creation, the identification of job openings, and job application were provided to Ms. Guerrero. Id. Further, WCDSS provided a Wal-Mart gift card, assistance with TANF, identified local charities to obtain food, clothing, and diapers, and provided diapers and furniture, including a pack-n-play

to the family. Id. Moreover, WCDSS provided and paid for parenting classes, a psychosocial evaluation, individual counseling with four (4) separate counselors, a psychological evaluation, a neuropsychological/psychological evaluation, dialectical behavioral counseling, and psychiatric assessment for Ms. Guerrero. Id.

Ms. Lopez and Ms. Seronio testified, to ensure Ms. Guerrero understood tasks when communicating, they would verbally convey the tasks and write the task down for Ms. Guerrero. III JA 644; V JA 1200. Moreover, Ms. Lopez and Ms. Seronio would have Ms. Guerrero repeat the tasks and watch her write them in a calendar. Id.

Despite the significant services and reasonable efforts offered, Ms. Guerrero failed to accomplish any of the goals/objectives identified in her CPSA. III JA 638, 676; VI JA 1275-1276. Ms. Guerrero's failures prevented WCDSS from safely returning the children to her care. Id. Specifically:

**Basic Needs:** Ms. Guerrero failed to obtain and maintain stable housing, obtain income, or demonstrate an ability to budget. III JA 620; V JA 1193, 1197, 1212-1213; VI JA 1274-1276. While Ms. Guerrero applied for Section 8 Housing and received a voucher, she failed to follow through with the necessary steps to move into an approved apartment. III JA 613, 780-781. Similarly, despite qualifying for financial assistance for housing from Victims of Crime Act ("VOCA"), Ms. Guerrero failed to take the lease to the VOCA representative to

obtain the financial assistance. II JA 400-406, 449, 450; III JA 613, 614; IV JA 780-781; V JA 1380. Moreover, after being informed additional documents were required for low-income energy assistance, Ms. Guerrero failed to follow through with obtaining said documents and re-applying for such assistance. IV JA 773.

Ms. Guerrero resided in at least sixteen (16) separate residences since September of 2013. II JA 338, 339; III JA 616; V JA 1187-1188; VI JA 1374, 1376-1379, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445. At the time of trial, Ms. Guerrero was not residing in a stable, safe, and appropriate residence where her children could be placed. Id.

Ms. Guerrero was briefly employed several times throughout the case; however, Ms. Guerrero failed to maintain such employment longer than one month because she chose to quit those jobs. III JA 626. Ms. Guerrero did not follow through with the necessary steps to obtain employment including drug testing, attending interviews, or securing the necessary transportation for interviews. III JA 627. Ms. Guerrero also admitted to Dr. Rogina that she just quits jobs, and has never had a career as a result thereof. IV JA 917; V SA 276-284.

Further, in September of 2014, Ms. Guerrero lost her TANF benefits and was not receiving any governmental benefits. III JA 627. At the time of trial, Ms. Guerrero only had one more year of TANF benefits remaining for her lifetime. I

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JA 148. Ms. Guerrero was prohibited from receiving food stamps due to fraud. III JA 628; VI JA 1275-1277, 1384.

Finally, Ms. Guerrero demonstrated an inability to budget appropriately. III JA 445; V JA 1318. Ms. Guerrero, as acknowledged her testimony, failed to allocate her TANF benefits and any income received from donating plasma or collecting cans and bottles appropriately to ensure she could maintain housing and pay her bills, including her power bill. III JA 445; V JA 1318; VI JA 1405-1406, 1409-1412.

**Motivation and emotional stability:** Ms. Guerrero failed to effectively address her mental and emotional illnesses and to follow through with recommended and needed treatment to address these issues. III JA 634, 643; VI JA 1275-1276. Ms. Guerrero failed to actively engage in, or follow through with, counseling with Brianna Carter, MA, MFT, Deken Gosset, MFTI, Dori Orlich, LCSW, and Amanda Buttacavoli, LCSW and certified dialectical behavioral therapist, despite each counselor recommending additional therapy. V JA 1205. Likewise, Ms. Guerrero failed to follow through with the recommendations resulting from a psychological evaluation completed by Julius Rogina, Ph.D., clinical and forensic psychologist, and the recommendation of a neuropsychological evaluation completed by Suzanne M. Aberasturi, Ph.D. V SA 285-299. Ms. Guerrero failed to follow through with the necessary enrollment

requirements for Washoe County family mental health court and was ultimately not accepted as a result thereof. III JA 643; IV JA 764.

In addition, Ms. Guerrero failed to demonstrate follow through or an ability to maintain a clean and sanitary residence where her children could be safely placed. III JA 635, 636. Despite being instructed as to what changes needed to be made, being provided with cleaning supplies, including a vacuum, and energy assistance opportunities, E.H-T. was removed from Ms. Guerrero's care because of a dirty and unsanitary residence. III JA 636; IV JA 733.

**Domestic Violence/Protective Capacity:** Ms. Lopez and Ms. Seronio testified domestic violence was also safety concern during the dependency case. III JA 645; V JA 1209. Mr. Hunt-Taylor was arrested for domestic violence against Ms. Guerrero and Ms. Guerrero reported a history of domestic violence between them. III JA 645. Despite obtaining an extended temporary protection order against Mr. Hunt-Taylor, Ms. Guerrero requested her visitations with the children occur with Mr. Hunt-Taylor while the protection order was in place. III JA 648; V SA 300-330.

Further, Ms. Guerrero engaged in a romantic relationship with Alberto Vasquez and allowed him to reside in her home despite having knowledge of his criminal history, outstanding warrants, and his engagement in a domestic altercation with Mr. Hunt-Taylor. III JA 648-649; VI JA 1209, 1213. Ms.

Guerrero testified she met Mr. Vasquez at a bus stop, and, the day she met him, asked him to stay with Mr. Hunt-Taylor, E.H-T., and herself. VI JA 1445, 1446. In fact, Ms. Guerrero consistently attempted to have Mr. Vasquez attend her visitations with the minor children and WCDSS was forced to move the visits on-site to ensure Mr. Vasquez did not attend the visits for the safety of the children. III JA 650-652.

**Counseling Services:** Throughout the dependency case, Ms. Guerrero met with four different counselors: Ms. Carter, Mr. Gossett, Ms. Orlich, and Ms. Buttacavoli. III JA 545, 546; IV JA 827, 829, 873; V JA 971, 973. Ms. Guerrero met with Ms. Carter initially for a psychosocial evaluation on June 24, 2013, at which time Ms. Carter diagnosed her with panic attack disorder without agoraphobia. IV JA 878, 880; V SA 272-275. Ms. Guerrero saw Ms. Carter for individual therapy three other times from August of 2013, to October of 2013. Id.

In June of 2014, Ms. Guerrero saw Mr. Gossett four times for individual counseling. IV JA 829, 831, 836. Ms. Guerrero did not engage in additional individual counseling treatment until February of 2015, at which time she saw Ms. Orlich for individual counseling. V JA 971, 973, 975. Ms. Guerrero saw Ms. Orlich on seven occasions until April of 2015. Id.

Ms. Guerrero next saw Ms. Buttacavoli in June of 2015, for individual and dialectical behavioral counseling. III JA 545-546. Ms. Buttacavoli diagnosed Ms.

Guerrero with a “mood disorder, otherwise specified, and borderline personality disorder” and recommended individual therapy and “continued assessment of her ability to commit to ongoing therapy ....” III JA 549, 550, 555. Ms. Guerrero only attended two therapy sessions with Ms. Buttacavoli in June of 2015. III JA 553, 557.

Ms. Guerrero did not engage in any additional counseling services to address her mental and emotional illnesses from June of 2015, forward. At trial, Ms. Guerrero presented no evidence of engagement in counseling or psychiatric care to address her mental and emotional illnesses.

Ms. Carter, Mr. Gossett, Ms. Orlich, and Ms. Buttacavoli each testified they had difficulty scheduling appointments with Ms. Guerrero, Ms. Guerrero failed to consistently attend her appointments, Ms. Guerrero was not engaged fully in therapy appointments she did attend, and Ms. Guerrero disengaged from counseling, despite additional counseling being recommended to address her outstanding mental and emotional illnesses. III JA 559-560, 837, 838, 841-843; IV JA 882, 883, 901; V JA 978, 979, 982-984.

**Dr. Rogina:** On January 3, 2015, Ms. Guerrero completed a psychological evaluation with Dr. Rogina. IV JA 910; V SA 276-284. Ms. Guerrero failed to return after her first appointment despite numerous attempts to schedule additional appointments. IV JA 912, 913.

Dr. Rogina was stipulated as an expert in the field of psychology. IV JA 903. As opined by Dr. Rogina, Ms. Guerrero was diagnosed with persistent depressive disorder with persistent major depressive episode, generalized anxiety disorder, panic disorder, unspecified neurocognitive disorder, and avoidant personality disorder. IV JA 921-922; V SA 276-284. Based upon the diagnoses, Dr. Rogina testified, Ms. Guerrero “suffers from severe mental illness ....”<sup>5</sup> IV JA 922. Dr. Rogina opined this means Ms. Guerrero has difficulty functioning, “taking care of herself, she needs [the] support of others, she functions at a low level.” Id. Further, Dr. Rogina found Ms. Guerrero suffers from an emotional illness;<sup>6</sup> however, Dr. Rogina was unable to determine the severity of this emotional illness as Ms. Guerrero failed to return for an additional appointment. IV JA 922-923.

In regards to Ms. Guerrero’s employment history, Dr. Rogina testified Ms. Guerrero stated, “I have never developed a career. I always quit jobs I have.” IV JA 917; V SA 279. Dr. Rogina further testified Ms. Guerrero “has a very difficult

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<sup>5</sup> Dr. Rogina defined a mental illness as “very debilitating ... they’re not able to function at the level that usually adults of that age and gender and socio economics status are functioning ....” IV JA 909. A “mental illness is debilitating the person to take care of one’s self, to function in the community on a reasonable level, and take care of others.” Id.

<sup>6</sup> Dr. Rogina defined an emotional illness as “part of mental dysfunctions cluster, so it has to do with moods and emotions ... with mood regulation disorder.” IV JA 910.

time taking care of herself and would have a very difficult time taking care of anybody else.” IV JA 919, 920.

Dr. Rogina recommended Ms. Guerrero complete a psychiatric and a parental capacity evaluation, and engage in individual counseling. IV JA 923; V SA 283. Dr. Rogina also recommended dialectical behavioral therapy, group psychotherapy, and the “children should continue in foster care.” Id.

**Dr. Aberasturi:** On February 27, 2015, Dr. Aberasturi completed a psychological/neuropsychological evaluation<sup>7</sup> for Ms. Guerrero. V SA 285-299. Dr. Aberasturi was qualified as an expert in the field of psychology and neuropsychology. JA III 466. Based upon this evaluation, Dr. Aberasturi diagnosed Ms. Guerrero with generalized anxiety with panic attacks, obsessive-compulsive disorder, dependent personality disorder, attention deficit/hyperactivity disorder – predominately inattentive type, MILD, and posttraumatic stress disorder.<sup>8</sup> III JA 506, 507; V SA 285-299.

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<sup>7</sup> Dr. Aberasturi testified a neuropsychological evaluation looks “at the different functional areas of the brain to see exactly how it’s working. You do observations, you do several batteries of tests to look at different strengths and weaknesses throughout the brain, and then you make conclusions based on that ... [it] is very thorough.” III JA 466, 467, 470. In contrast, Dr. Aberasturi testified, a “psychological evaluation is really looking at the emotional state of the person and frequently will include a cognitive functioning .... a psychological evaluation would be encompassed in the neuropsychological evaluation.” Id. at p. 470.

<sup>8</sup> When read the diagnoses made by Dr. Aberasturi, Dr. Rogina testified those diagnoses were indicative of a “serious mental illness ...” and emotional illness. IV JA 936, 940.

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

Dr. Aberasturi concluded Ms. Guerrero would benefit from therapy. III JA 511, 512, 513; V SA 285-299. Dr. Aberasturi recommended Ms. Guerrero engage in therapy, noting dialectical behavioral therapy may be beneficial, and Ms. Guerrero should be seen for medication therapy. SA V 300-330. Dr. Aberasturi also recommended that any instructions provided to Ms. Guerrero are written or repeated.<sup>9</sup> III JA 510; V SA 285-299. Dr. Aberasturi testified “I do believe [Ms. Guerrero] can understand tasks. She has average intelligence. She definitely could process information.” III JA 509.

Dr. Aberasturi opined, if Ms. Guerrero “had fully engaged in therapy ... I would be hopeful ....” she could overcome her diagnoses. III JA 513. Further, Dr.

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<sup>9</sup> On February 27, 2015, Dr. Aberasturi met with Ms. Guerrero to discuss the results of her evaluation, provided Ms. Guerrero with a copy of her evaluation which identified the entities that Ms. Guerrero could obtain the recommended treatment services, and provided the phone numbers for the entities. III JA 514; V SA 285-299.

Aberasturi testified Ms. Guerrero's anxiety disorder is a "treatable disorder." III JA 552.

At the time of trial, despite the numerous services offered to Ms. Guerrero over a twenty-eight (28) month period, the evidence demonstrated Ms. Guerrero failed to complete any of the objectives identified in her CPSA and failed to make the necessary behavioral adjustments to reunify with her children. III JA 686; VI JA 1275-1276. Ms. Lopez and Ms. Seronio testified there were no additional services which could have been offered to Ms. Guerrero to bring about lasting change. III JA 677, 704; V JA 1020, 1051. At trial, Ms. Guerrero still had no source of income, was not living in a stable residence where the children could be placed, and was not engaged in any treatment to address her severe mental and emotional illnesses. Id.

**Children and Current Placement:** R.T., K.G-T., and N.G-T. were placed in foster care with Sandra Matute in May of 2013, and, since that time, Ms. Matute has cared for the children and incorporated them into her family. III JA 598, 694; VI JA 957. Ms. Matute opened her home to E.H-T. in September of 2014. IV JA 960; V JA 1177. Ms. Matute wishes to adopt all four children and has been identified by WCDSS as their adoptive placement. III JA 694; V JA 1102.

Ms. Matute testified she has never failed to pay her bills, she does not drink or use illegal substances, she has no criminal history, she has never had mental

health issues, and she maintains a clean and safe residence in Sun Valley, Nevada. IV JA 955. Ms. Matute attends church “two to three times a month” and has taken the children with her. IV JA 956. Further, Ms. Matute testified she lives in a three bedroom mobile home with a big yard that is located in a safe family oriented neighborhood. IV JA 956, 957. Ms. Matute’s two biological sons who are 7 and 8 also reside with her and the children. IV JA 954.

Ms. Matute has ensured all of the needs of the children are met including taking them to school and speech and play therapy appointments. III JA 696, 697, 698; IV JA 961-963. Ms. Matute also took the necessary steps to address E.H-T.’s febrile seizure diagnoses. V JA 1218-1219. Ms. Matute testified R.T., K.G-T., N.H-T., and E.H-T. and her biological sons all play soccer, baseball and karate. V JA 1091-1092. To take care of all six of these children, Ms. Matute is very disciplined and has a schedule for everything. V JA 1091.

The testimony showed Ms. Matute met the basic and emotional needs of the children and the children were flourishing in her care. V JA 1093. Moreover, R.T., K.G-T., N.G-T., and E.H-T. have become very attached and bonded to Ms. Matute as they hug and kiss her, tell her they love her, and “just are her kids.” III JA 669-670; V JA 1094, 1218. Ms. Matute further testified she believed the children have become attached to her sons as they identify with them as their

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siblings, treat each other equally, and protect one another like brothers and sisters. V JA 1094.

Ms. Matute testified she loves the children and they turn to her for comfort and support. JA V 1097, 1099. Ms. Matute indicated all four children address her as mom and they all, aside from R.T. when he is visiting Ms. Guerrero, refer to Ms. Guerrero as Jacqueline. Id. When asked what was the most important thing for the court to know about these children, Ms. Matute testified “the kids feel as if they’re in their home, they think of it as their home, and if they were to change from a place that is already established and stable and change to somewhere unstable, then that would really affect them.” V JA 1101, 1102.

Thus, at the time of trial the testimony showed R.T., K.G-T., N.G-T., and E.H-T. were flourishing in Ms. Matute’s care as the children are bonded with Ms. Matute and are residing in a safe and stable home where all of their basic needs are met. III JA 704-705; V JA 1219-1221. Further, significant evidence was presented to demonstrate if these children were separated from Ms. Matute at this juncture it would be detrimental to them. Id.

The district court expressly incorporated and adopted “the summary of proceeding in this case up until the time of trial” and the “summary of the testimony of some of the witnesses at trial” as set forth in Petitioner’s Trial Brief, specifically pages 3-26. I JA 140, 142; I JA 29-75. The trial court further found

“the testimony of the witnesses called by the Petitioner were convincing.” I JA 142. Based upon the court’s adoption of this evidence and testimony, the trial court found termination was appropriate as parental fault and best interest had been proven by clear and convincing evidence in accordance with NRS 128.105.

#### **IV. STANDARD OF REVIEW**

This Court reviews the district court’s factual findings in its order terminating parental rights “for substantial evidence, and we will not substitute our own judgment for that of the district court.” See In the Matter of Termination of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2004) (citing Kobinski v. State, 103 Nev. at 296, 738 P.2d at 897 (1987)).

“The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” See In re Stephanie M., 867 P.2d 706, 719 (1994)(citation omitted).

"The reviewing court must consider all the evidence, draw all reasonable inferences, and resolve all evidentiary conflicts, in a light most favorable to the trial court's ruling. The precise test is whether any rational trier of fact could conclude that the trial court advanced the best interests of the child. We are required to uphold the ruling if it is correct on any basis, regardless of whether it is

the ground relied upon by the trial judge." See In re Robert L., 24 Cal.Rptr.2d 654, 659 (1993) (citing In re Marriage of Carlson, 280 Cal.Rptr 840 (1991)).

If a discretionary decision is "supported by substantial evidence, there is no abuse of discretion. Substantial evidence is evidence which a reasonable mind might accept as adequate to support a conclusion." See State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P. 2d 497, 498-99 (1986). This Court reviews findings of fact for substantial evidence and questions of law de novo. Id.

"[W]hen petitioning the district court to terminate a parent's parental rights, a petitioner must demonstrate by clear and convincing evidence that termination is in the child's best interest and that parental fault exists." See In re Parental Rights as to C.C.A., 128 Nev, ----, ----, 273 P.3d 852, 854 (2012). The Supreme Court will uphold the district court's termination order when it is supported by substantial evidence. Id. (Citing Matter of Parental Rights as to A.J.G., 122 Nev. 1418, 1423, 148 P.3d 759, 763 (2006)).

A trial judge is permitted to draw upon his own knowledge and experience in hearing a case. See generally Trent v. Trent, 111 Nev. 309, 890 P.2d 1309 (1995). "[A] judge who is acting as the fact finder must necessarily bring some real life experiences into the courtroom." Id. (citing to e.g., In re Inquiry Concerning a Judge, 357 So.2d 172, 178 (Fla. 1978)).

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The Supreme Court will not attempt to substitute its judgment for that of the trial court in area of heightened sensitivity surrounding a procedure to terminate parental rights, since the trial court is in position to observe the demeanor of the parties and weigh their credibility. See In re Parental Rights as to C.J.M., 118 Nev. 724, 732, 58 P.3d 188, 194 (2002)(citation omitted).

## **V. SUMMARY OF THE ARGUMENT**

Ms. Guerrero's parental rights were not terminated because of poverty. I JA 138-150. Rather, Ms. Guerrero's parental rights were terminated because parental fault existed in accordance with NRS 128.105(1)(b) and NRS 128.109. Id. Additionally, it was in the best interests of the children that Ms. Guerrero's parental rights were terminated in accordance with NRS 128.105(1)(a) and NRS 128.109. Id.

The substantial evidence presented at trial demonstrated Ms. Guerrero willfully failed to obtain and maintain safe and stable housing. II JA 338, 339; III JA 616, 620; V JA 1187-1188, 1193, 1197, 1212-1213; VI JA 1274-1276, 1374, 1376-1379, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445. When Ms. Guerrero did have housing, she failed to maintain the household in a sanitary condition where the children could be placed. II JA 214, 270, 286, 410; IV JA 773; V SA 347-348, VI SA 349-359. Likewise, when Ms. Guerrero did have income, she

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failed to apply this income to maintain a residence. III JA 445; V JA 1318; VI JA 1405-1406, 1409-1412.

Throughout the twenty-eight months WCDSS worked with Ms. Guerrero, WCDSS assisted Ms. Guerrero in applying and obtaining Section 8 Housing, VOCA funds, and assistance with utility bills; however, despite qualifying for these benefits, Ms. Guerrero failed to take the necessary steps to collect these benefits and secure housing. II JA 400-406, 449, 450; III JA 613, 614, 780-781; IV JA 773. V JA 1380

The substantial evidence presented at trial further demonstrated Ms. Guerrero, despite having employment opportunities, quit jobs and failed to follow through with the necessary interviews and drug tests associated with obtaining employment – amounting to willful unemployment. III JA 626, 627; IV JA 917; V SA 276-284. Ms. Guerrero also reported to Dr. Rogina she did not have a career because she quits jobs she obtains. IV JA 917; V SA 276-284. Further, Ms. Guerrero was unable to obtain food stamps as she had committed food stamp fraud. III JA 628; VI JA 1275-1277, 1384.

Moreover, the substantial evidence demonstrated Ms. Guerrero had unaddressed severe mental and emotional health issues. III JA 506, 507; IV JA 921-923; V SA 276-284, 285-299 Both Dr. Rogina and Dr. Aberasturi opined to

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this and recommended counseling and medication to address these issues. IV JA 923; V SA 283.

Dr. Rogina, an expert in the field of psychology, expressly found that the children should remain in the care and custody of WCDSS and that Ms. Guerrero not only had difficulty caring for herself, but for others as well. IV JA 919, 920, 922. Dr. Aberasturi opined, Ms. Guerrero “has significant issues being dependent on other.” III JA 506, 507, 510, 521; V SA 285-299. Dr. Aberasturi opined Ms. Guerrero’s failure to address her severe emotional and mental health issues impacted her ability to maintain employment. III JA 534.

Ms. Guerrero was provided with counseling from four separate therapists. II JA 559-560, 837, 837, 841-843; IV JA 882, 883, 901; V JA 978, 979, 982-984. Rather than take advantage of such services, Ms. Guerrero failed to follow through with individual counseling, despite each counselor recommending continued counseling, leaving her severe mental and emotional illnesses unaddressed. Id.

Furthermore, Ms. Guerrero engaged in relationship that included domestic violence. III JA 645; V JA 1209. Ms. Guerrero failed to demonstrate appropriate protective capacities as she continued in a relationship with Mr. Hunt-Taylor and requested her visits with the children include Mr. Hunt-Taylor even though Ms. Guerrero had obtained a restraining order against him. III JA 645, 648; V JA 1209; V SA 300-330. Also, Ms. Guerrero asked Ms. Vasquez to live with her, Mr.

Hunt-Taylor, and E.H-T. after meeting him at the bus stop the same day. III JA 648-649; VI JA 1209, 1213; VI 1445, 1146. While living with the family, Mr. Vasquez and Mr. Hunt-Taylor engaged in a domestic violence incident with E.H-T. present and resulting in Mr. Hunt-Taylor's arrest. III JA 645. Ms. Guerrero also, knowing of Mr. Vasquez significant criminal history, allowed him to be around the children, resulting in her visits being on site at WCDSS to protect the children. III JA 648-649, 650-652; VI JA 1209, 1213

Based upon the foregoing, WCDSS provided substantial evidence, arising to clear and convincing evidence, to demonstrate parental fault pursuant to NRS 128.

Regarding the best interest finding, the substantial evidence presented demonstrated the children were placed in a safe, loving home where all of their needs were met. III JA 598, 694, 696, 697, 698; VI JA 955, 956, 957, 961-963, 1091-1092, 1102; V JA 1218-1219 This is not a "middle-class idyllic home," but, rather, a mobile home with three bedrooms shared between six children and one adult. IV JA 956, 957. The children have bonded with Ms. Matute, address her as mother, and recognize her sons as their siblings. III JA 699-670; V JA 1094, 1219. Ms. Matute has ensured all of the needs of the children are met including their medical and emotional needs, educational needs, and basic needs. III JA 696, 697, 698; IV JA 961-963; V JA 1091-1092, 1218-1219. Substantial evidence presented

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also demonstrated removing these children from the care of Ms. Matute would be detrimental to them. III JA 704-705; V JA 1219-1221.

Therefore, WCDSS provided substantial evidence, arising to clear and convincing evidence, to demonstrate it was in the best interest of R.T., K.G-T., N.H-T., and E.H-T. that Ms. Guerrero’s parental rights were terminated.

Finally, Appellant fails to identify the legal basis for arguing that “substantial harm to a child” must be proven to terminate parental rights. There is no statutory or binding case law requiring such a finding. Thus, the district court ruling should be upheld.

## **VI. ARGUMENT**

The standard of proof in termination of parental rights matters is clear and convincing evidence. Pursuant to NRS 128.105(1), “[t]he primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination.” To terminate parental rights, pursuant to NRS 128.105, it must be shown, by clear and convincing evidence, that:

(1) Parental fault exists based upon **one** of the enumerated parental fault factors in NRS 128.105(1)(b); and

(2) The best interests of the child would be served by the termination of said parental rights.

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Pursuant to NRS 128.105(1)(b), parental fault factors include at least one of the following:

- (1) Abandonment;
- (2) Neglect;
- (3) Unfitness of the parent;
- (4) Failure of parental adjustment;
- (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;
- (6) Token efforts by the parent;
  - To support or communicate with the child;
  - To prevent neglect of the child;
  - To avoid being an unfit parent; **OR**
  - To eliminate the risk of serious physical, mental or emotional injury to the child.

Pursuant to NRS 128.014, a neglected child is a child “[w]ho lacks the proper parental care by reason of the fault or habits of his or her parent ....” NRS 128.014(1). Likewise, a neglected child is a child whose “parent ... neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for the child’s health, morals or well-being.” NRS 128.014(2). The parent’s neglect, however, need not be willful. NRS 128.014.

An unfit parent is defined as “any parent of a child who, by reason of the parent’s fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance and support.”

In accordance with NRS 128.106(1), to determine if a parent has neglected a child or if a parent is unfit, the court must consider “[e]motional illness, mental

illness or mental deficiency of the parent which renders the parent consistently unable to care for the immediate and continuing physical or psychological needs of the child for extended periods of time.” Additionally, the court shall consider the “[r]epeated or continuous failure by the parent, although physically and financially able, to provide the child with adequate food, clothing, shelter, education or other care and control necessary for the child’s physical, mental, and emotional health and development ....” NRS 128.106(5). Finally, the court shall consider the “[i]nability of appropriate public or private agency to reunite the family despite reasonable efforts on the part of the agencies.” NRS 128.106(8).

Failure of parental adjustment, pursuant to NRS 128.0126, “occurs when a parent ... [is] unable or unwilling within a reasonable time to correct substantially the circumstances, conduct or conditions which led to the placement of their child outside of their home, notwithstanding reasonable and appropriate efforts made by the State ... or agency to return the child to his or her home.” Furthermore, pursuant to NRS 128.109(1)(b), “[i]f a parent ... fails to comply substantially with the terms and conditions of a plan to reunite the family within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment ....”

Pursuant to NRS 128.109, two rebuttable presumptions apply if a child has been placed outside of his or her home in excess of 14 months of any of the last 20

consecutive months. First, pursuant to NRS 128.109(1)(a), it must be presumed a parent has demonstrated only token efforts to care for the child under NRS 128.105(f)(2). Second, pursuant to NRS 128.109(2), it must be presumed the best interest of the child is served by the termination of parental rights. Absent provision of evidence to overcome these presumptions, parental fault and the best interest requirement is established and termination is appropriate.

Neither presumption may be overcome or otherwise affected by evidence of failure of the state to provide services to the parent. NRS 128.109(3). These presumptions are only rebutted by evidence, proven by preponderance of the evidence, to the contrary. In Re. the Parental Rights as to J.D.N., et al. v. State of Nevada Department of Family Services, 283 P.3d 842 (2012).

Pursuant to NRS 128.107, the Court must consider the following if a child is not in the physical custody of a parent:

1. The services provided or offered to the parent or parents to facilitate a reunion with the child.
2. The physical, mental or emotional condition and needs of the child and the child's desires regarding the termination, if the court determines the child is of sufficient capacity to express his or her desires.
3. The effort the parent or parents have made to adjust their circumstances, conduct or conditions to make it in the child's best interest to return the child to his or her home after a reasonable length of time, including but not limited to:
  - (a) The payment of a reasonable portion of substitute physical care and maintenance, if financially able;

(b) The maintenance of regular visitation or other contact with the child which was designed and carried out in a plan to reunite the child with the parent or parents; and

(c) The maintenance of regular contact and communication with the custodian of the child.

4. Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent or parents within a predictable period.

Pursuant to NRS 128.108, the Court must also consider if a child has become integrated into the foster family to the point that the child identifies that foster family as his family and whether the foster family is capable and willing to permanently treat the child as a family member. In making that determination, pursuant to NRS 128.108, the court shall consider the following factors:

1. The love, affection and other emotional ties existing between the child and the parents, and the child's ties with the foster family.

2. The capacity and disposition of the child's parents from whom the child was removed as compared with that of the foster family to give the child love, affection and guidance and to continue the education of the child.

3. The capacity and disposition of the parents from whom the child was removed as compared with that of the foster family to provide the child with food, clothing and medical care and to meet other physical, mental and emotional needs of the child.

4. The length of time the child has lived in a stable, satisfactory foster home and the desirability of the child continuing to live in that environment.

5. The permanence as a family unit of the foster family.

6. The moral fitness, physical and mental health of the parents from whom the child was removed as compared with that of the foster family.

7. The experiences of the child in the home, school and community, both when with the parents from whom the child was removed and when with the foster family.

8. Any other factor considered by the court to be relevant to a particular placement of the child.

Pursuant to NRS 128, there is no requirement that a court find “serious harm” by clear and convincing evidence to terminate parental rights as argued by the Appellant. While Santosky v. Kramer discusses the termination of parental rights, the sole issue before the U.S. Supreme Court is “whether ‘fair preponderance of the evidence’ standard is constitutionally sufficient.” 455 U.S. 745 at 751 (1982). This case in no way mandates a finding, by clear and convincing evidence, that serious harm has been committed by a parent to terminate parental rights. Id. While NRS 128.105(e) allows for the establishment of parental fault by proving a child is at risk of serious physical, mental, or emotional injury to the child if the child were returned to, or remains in the home of his parent, this parental fault finding need not be made in every termination case. Rather, this is one parental fault finding, out of several, which can be made to establish parental fault in a termination matter.

The case law cited by Appellant, relating to poverty, is not binding upon this jurisdiction and is distinguishable from this case. First, Appellant argues, pursuant

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to the Interest of E.W., \_\_\_ S.W.3d \_\_\_, (Tex.App. 2015)<sup>10</sup> “the best interest standard does not permit termination [of parental rights] merely because child might be better off living elsewhere.” That case was interpreting Texas law and indicated that the only evidence before it was the child was in foster care, his needs were being met, he bonded with the foster family, and the foster family wanted to adopt him. Id. Here, the trial court did not merely find that the children might be better off living somewhere else; rather, the evidence presented demonstrated it was in the best interest of these children to be adopted by Ms. Matute as the children identified Ms. Matute and her sons as family and it would be detrimental to separate the children from Ms. Matute and her family. III JA 669-670, 704-705; V JA 1093, 1094, 1219-1221. Moreover, substantial evidence demonstrated Ms. Matute was meeting and addressing all of the medical, educational, and basic needs of the children. III JA 696, 697, 698; IV JA 961-963; V JA 1091-1092, 1093, 1218-1219. Also, parental fault was established as discussed subsequently.

This is not a case where Ms. Guerrero failed to be a model parent. This is a case where Ms. Guerrero chose to be willfully unemployed, to be willfully

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<sup>10</sup> A notice is provided regarding this case that “this opinion has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal.” The Texas Court of Appeals also noted the lower court’s findings were based upon “a very brief trial during which every little evidence was presented ...” The trial court also indicated its ruling was based partially on “the court’s ‘judicial knowledge’ of the case ....” That is clearly not the case in this matter.

homeless, and to willfully fail to address her severe mental and emotional illnesses. II JA 338, 339, 559-560; III JA 616, 620, 626, 627, 837, 838, 841-843; IV JA 882, 883, 901, 917; V JA 978, 979, 982-984, 1187-1188, 1193, 1197, 1212-1213; VI JA 1274-1276, 1374, 1376-1379, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445; V SA 276-284.

Five Minor Children, 407 A.2d 198 (Del. 1979), In re J.V.J., 765 S.E.2d 389 (Ga. Ct. App. 2014), and In the Interest of C.J.V., 746 S.E.2d 783 (Ga. 2013) are also distinguishable from this case as termination was not based upon Ms. Guerrero's poverty and lifestyle or that she was merely unemployed without prospects for future employment. I JA 138-151. Instead, termination was based upon Ms. Guerrero's failure to address her severe emotional and mental illnesses which impacted her ability to safely care for her children, which was supported by expert testimony. Id.

In re P.C., 165 Ca.App.4<sup>th</sup> 98 (Cal. Ct. App. 2008) and In re G.S.R., 159 Cal.App.4<sup>th</sup> 1202 (Cal. Ct. App. 2008) are relied upon to show the dependency court did not have jurisdiction over this matter at the time of removal. This is not an issue properly before the Court as jurisdiction was not challenged. The issue at hand is whether termination of Ms. Guerrero's parental rights was appropriate. While these cases discuss whether poverty and insufficient housing is a sufficient basis for termination, these cases are distinguishable based upon the substantial

evidence presented and subsequently discussed. Furthermore, facts independent of Ms. Guerrero's poverty including her failure to follow through, her failure to address her severe emotional and mental illnesses, and her failure to demonstrate appropriate protective capacities regarding domestic violence were a basis for this termination. I JA 138-151.

**1. Whether the district court properly found parental fault pursuant to NRS 128.105(1)(b) and 128.109(1)(a) when Ms. Guerrero willfully failed to obtain and maintain income, willfully failed to obtain and maintain a safe and stable home, and willfully failed to address her severe mental and emotional illnesses.**

**a. The trial court correctly found the NRS 128.109(1)(a) applied to R.T., K.G-T., and N.H-T.**

The district court found the NRS 128.109(1)(a) presumption applied to R.T., K.G-T., and N.H-T., and, thus, Ms. Guerrero demonstrated only token efforts to care for them. NRS 128.105(1)(b)(6); I JA 147-148. Therefore, parental fault was established. Id. The district court further found Ms. Guerrero failed to overcome this presumption. Id.

The district court's findings were based upon the presentation of substantial evidence. Id. Specifically, the evidence showed R.T., K.G-T., and N.H-T. were removed from parental custody by WCDSS on April 19, 2013, and, pursuant to the underlying NRS 432B dependency matter, remained in the care and custody of WCDSS since that date. III JA 694; I SA 1, 9-10. Consequently, R.T., K.G-T, and N.H-T. were placed outside of their home in the care and custody of WCDSS in

excess of 28 of the last 28 consecutive months, invoking the application of NRS 128.109(1)(a) presumption. Id.

No evidence was presented by Ms. Guerrero to overcome the presumption. Rather, the substantial evidence presented, as detailed below, proves parental fault by Ms. Guerrero due to her lack of follow through pursuant to NRS 128.105(1)(b).

**b. The trial court correctly found parental fault pursuant to NRS 128.105(1)(b).**

In addition to establishing parental fault pursuant to NRS 128.109(1)(a), the district court found parental fault was proven by clear and convincing evidence pursuant to NRS 128.105(1)(b) based upon Ms. Guerrero's failure to maintain a stable and safe residence, obtain and maintain income, and to address her severe emotional and mental illnesses despite the provision of reasonable efforts by WCDSS. I JA 138-150. The district court emphasized Ms. Guerrero's lack of follow through and her inability to achieve even the minimal level required to care for her children. Id.

Moreover, the district court found, "Ms. Guerrero ... falls short in each of the important areas required [to] be a parent." Id. When expressly dismissing the argument that termination was based upon poverty, the district court emphasized, poverty is not "what has caused [Ms. Guerrero's] failure to do what is necessary to reunify with her children." Id. Further, the district court found if the children were returned to Ms. Guerrero's care, "[t]he children would be at an increased and

untenable risk of re-removal ....” Id. at p. 149. Thus, parental fault was established. Id.

**Failure to obtain and maintain a safe and stable residence:** The substantial evidence presented demonstrated Ms. Guerrero lived in at least sixteen (16) different residences over the 28 months preceding the termination trial. II JA 338, 339; III JA 616; V JA 1187-1188; VI JA 1374, 1376-1379, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445. When Ms. Guerrero did have a residence, she failed to keep it clean and safe, and to budget appropriately for rent and utility bills. II JA 270, 214, 286, 410; IV JA 773; V SA 34-348; VI SA 349-359. Ms. Guerrero was provided with and qualified for Section 8 Housing, VOCA funds, and low-income energy assistance; however, she failed to follow through with the necessary steps to obtain these services. II JA 400-406, 449, 450; III JA 613, 614, 620; IV JA 773, 780-781; V JA 1193, 1197, 1212-1213; VI JA 1275-1276, 1380.

Ms. Guerrero’s failure to obtain and maintain a residence was not due to poverty. Instead, the substantial evidence demonstrated Ms. Guerrero failed to follow through with service to obtain housing and failed to maintain a residence in a sanitary and safe condition where the children could be placed. II JA 214, 270, 286, 400-406, 410, 449, 450; III JA 613, 614, 620; IV JA 773, 780-781; V JA 1380, 1193, 1197, 1212-1213; VI JA 1275-1276; V SA 346-348; VI SA 349-359. Thus, parental fault is proven pursuant to NRS 128.105.

**Failure to maintain employment and budget income received:** The substantial evidence presented further established Ms. Guerrero failed to maintain a job in excess of one month during the underlying dependency matter as she quit each job obtained. III JA 626; IV JA 917; VI JA 1374; V SA 276-284. While Ms. Guerrero was capable of obtaining employment, she reported to Dr. Rogina she quits jobs obtained. IV JA 917; V SA 576-284. Moreover, Dr. Aberasturi testified Ms. Guerrero's failure to engage in treatment to address her severe mental and emotional illnesses prevented her from maintaining employment. III JA 534.

Further, when Ms. Guerrero did receive income, including TANF, she failed to budget appropriately to meet the basic needs of the children. II JA 295, 297, 339-340; III JA 614, 627; IV JA 775; VI JA 1318; I SA 1-54. R.T., K.G-T., and N.H-T. were removed from the care and custody of Ms. Guerrero while she was receiving TANF benefits due to her inability to provide for their basic needs. Id. Ms. Guerrero also could not receive food stamps as she committed fraud. III JA 628; VI JA 1276-1277, 1384.

Again, this is not an issue of poverty. This is an issue of willful underemployment as Ms. Guerrero quit jobs obtained, did not engage in the necessary treatment to enable maintaining employment, and did not budget appropriately. Id. II JA 295, 297, 339-340; III JA 614, 627; IV JA 775; VI JA

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1318; I SA 1-54. Consequently, a finding of parental fault pursuant to NRS 128.105 is further supported.

**Failure to address severe mental and emotional illnesses:** Dr. Rogina opined Ms. Guerrero suffers from severe mental and emotional illnesses which not only impact her ability to care for herself, but to care for others. IV JA 919, 920, 921-922, 923; V SA 276-284. Dr. Rogina opined, this means Ms. Guerrero has difficulty functioning, “taking care of herself, she needs [the] support of others, she functions at a low level.” Id. In rendering his diagnoses, Dr. Rogina emphasized Ms. Guerrero’s children should remain in the care and custody of WCDSS. IV JA 923; V SA 283.

Notwithstanding her diagnoses and their impact, Ms. Guerrero habitually refused to engage in and follow through with treatment to address her mental and emotional illnesses. II JA 559-560, 837, 838, 841-843; IV JA 882, 883, 901; V JA 978, 979, 982-984. Ms. Guerrero failed to follow through with individual counseling with Ms. Carter, Mr. Gosset, Ms. Orlich, and Ms. Buttacavoli. Id. Likewise, Ms. Guerrero failed to follow through with the recommendations made for treatment by Dr. Rogina and Dr. Aberasturi. V JA 1205; V SA 300-345. Ms. Guerrero also failed to follow through with enrollment in Washoe County Family Mental Health Court. III JA 643; IV JA 764.

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Clearly, this is not poverty. Ms. Guerrero chose, to her own peril and that of her children, to not engage in counseling and psychiatric services to address her mental and emotional illnesses. Therefore, parental fault is again established pursuant to NRS 128.105.

**Failure to address domestic violence and protective capacities:** Ms. Guerrero engaged in relationships which involved domestic violence and associated with individuals who were not safe for her children. Specifically, E.H-T. was present during a domestic violence incident which resulted in Mr. Hunt-Taylor's arrest. V SA 300-345. Ms. Guerrero requested visitation with the children together with Mr. Hunt-Taylor while an active Extended Protection Order was in place. III JA 648; V SA 300-330. Further, Ms. Guerrero engaged in a romantic relationship with Mr. Vasquez and allowed him to attend visitation with the children despite knowing WCDSS did not approve of this given his criminal history. III JA 648-652; V JA 1209.

Yet again, this is not poverty. Instead, the foregoing demonstrates Ms. Guerrero failed to take the appropriate steps to protect her children from domestic violence and unsafe individuals. This substantial evidence further establishes parental fault pursuant to NRS 128.105.

**WCDSS provided reasonable efforts:** The substantial evidence presented established more than reasonable efforts were provided to Ms. Guerrero to

facilitate reunification. II JA 338, 339; III JA 616; V JA 1187-1188; VI JA 1374, 1376-1379, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445. The dependency court found on October 17, 2013, April 17, 2014, January 15, 2015, and May 21, 2015, that WCDSS had provided reasonable efforts to reunify R.T., K.G-T., N.H-T., and E.H-T. with Ms. Guerrero. I SA 1-100. When asked what additional services Ms. Guerrero required at trial, she identified absolutely no services which had not already been offered to her by WCDSS. VII JA 1536-1538.

Additionally, Ms. Guerrero had the assistance of WCDSS and the Children's Cabinet. III JA 594. Ms. Lopez and Ms. Seronio testified no other efforts could have been provided to Ms. Guerrero to effectuate reunification as all efforts had been exhausted. III JA 677, 704; V JA 1220.

Despite the provision of reasonable efforts, Ms. Guerrero failed to comply with her CPSA and the issues identified in the CPSA were still in existence at the time of the termination trial. III JA 620; V JA 1193, 1197, 1212-1213; VI JA 1275-1276. Ms. Guerrero had no source of income, no residence at which the children could be placed, and was not engaging in services to address her mental and emotional illnesses. III JA 616, 643, 676; VI JA 1275-1276; VII JA 1557. Ms. Seronio testified, Ms. Guerrero had not made the parental adjustments to reunify as "her behavior[s] have not changed." V JA 1219-1220.

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**Lack of follow through by Ms. Guerrero:** Ms. Guerrero consistently failed to follow through and engage in any services to address the reasons which brought the children into the care and custody of WCDSS. Ms. Buttacavoli testified, Ms. Guerrero’s failure to follow through was concerning as Ms. Guerrero stated “she was coming to therapy ... to try to reunify with her children, and it was certainly concerning considering what potential consequences there could be for her not following through.” III JA 559. Ms. Orlich testified, Ms. Guerrero “struggled to see her role and responsibility in” the removal of her children and blamed others rather than recognize her role in the situation. V JA 982-983. Ms. Carter testified, Ms. Guerrero “stated numerous times she was very motivated to get her children back and to engage in services, but ... she wasn’t able to follow through with my recommendations.” IV JA 883. Ms. Tyre testified:

Ms. Guerrero lacked skills and motivation in order to parent and keep a child safe ... we had offered her services and services, and they weren’t followed through [with]. Had she followed through with services ... she would have had a permanent residence that was paid for by Section 8 housing. However, she lost the Section 8 housing because she didn’t follow through ... [she did] not take advantage of even one of those services [offered]. In order to parent a nine-month old, even just a nine-month old, you need to have motivation enough to fill out a lease and turn it in when someone is offering you hundreds of dollars of free money ....

III JA 449, 450. Ms. Lopez also testified, “[t]he services are offered, there’s no follow through, then we’re back to zero. Services are offered again, we’re back to zero. There’s no follow through. We’re in a cycle here.” IV JA 799.

Based upon the totality of the foregoing, parental fault was established by clear and convincing evidence pursuant to NRS 128.105(2). I JA 138-150; II JA 338, 339, 559-560; III JA 616, 620, 626, 627, 837, 838, 841-843; IV JA 882, 883, 901, 917; V JA 978, 979, 982-984, 1187-1188, 1193, 1197, 1212-1213; VI JA 1274-1276, 1374, 1376-1379, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445; V SA 276-284. As found by the district court, this is not an issue of poverty. I JA 148. Instead, this case involves a parent who willfully chose not to provide for her children's basic needs, willfully chose to not provide safe housing, and willfully chose not to address her mental and emotional illnesses. II JA 338, 339, 559-560; III JA 616, 620, 626, 627, 837, 838, 841-843; IV JA 882, 883, 901, 917; V JA 978, 979, 982-984, 1187-1188, 1193, 1197, 1212-1213; VI JA 1274-1276, 1374, 1376-1379, 1386-1387, 1388, 1389, 1402-1403, 1444, 1445; V SA 276-284. Furthermore, Ms. Guerrero failed to demonstrate appropriate protective capacities and did not follow through with any of the services required to reunify with her children. Id. Based upon this substantial evidence, parental fault is established, including neglect (NRS 128.105(1)(b)(2)), unfitness of Ms. Guerrero to parent (NRS 128.105(1)(b)(3)), failure of adjustment by Ms. Guerrero to parent (NRS 128.105(1)(b)(4)), and token efforts by Ms. Guerrero to prevent the neglect of these children, avoid being an unfit parent, and eliminating the risk of serious physical, mental, or emotional injury to the children (NRS 128.105(1)(b)(5)).

Pursuant to In the Matter of Termination of Parental Rights as to N.J., given the district court's factual findings and the substantial evidence supporting said finding, the district's court judgment cannot be substituted. Thus, parental fault was properly found pursuant to NRS 128.105(1)(b).

**2. Whether the district court properly found it was in the best interests of R.T., K.G-T., N.G-T., and E.H-T. to terminate Ms. Guerrero's parental rights pursuant to NRS 128.105(1)(a) and 128.109(2) when the four children are flourishing in an adoptive placement where all of their needs are met, where the children are cared for by a mentally stable individual who is capable of following through with tasks to effectively provide for the children, where they are treated and loved like family, and testimony proved it would be detrimental to remove them from this adoptive home.**

**a. The trial court correctly found the NRS 128.109(2) presumption applied to R.T., K.G-T., and N.H-T.**

The district court found the NRS 128.109(2) presumption applied to R.T., K.G-T., and N.H-T.; thus, it was in the best interests of R.T., K.G-T., and N.H-T. that MS. Guerrero's parental rights were terminated. NRS 128.105(1)(a); I JA 147-148. The district court further found Ms. Guerrero failed to overcome this presumption. Id.

The district court's findings were based upon the presentation of substantial evidence. Id. Specifically, R.T., K.G-T., and N.H-T. were removed from parental custody by WCDSS on April 19, 2013, and, pursuant to the underlying NRS 432B dependency matter, remained in the care and custody of WCDSS since that date. II JA 270; I SA 1-54. Thus, R.T., K.G-T., and N.H-T., pursuant to NRS 432B,

were placed outside of their home in the care and custody of WCDSS in excess of 28 of the last 28 consecutive months, invoking the application of the NRS 128.109(2) presumption. Id.

No evidence was presented by Ms. Guerrero to overcome the presumption. Rather, the substantial evidence presented, as detailed below, demonstrated termination of parental rights was in the best interest of all four children.

**b. The trial court correctly found it was in the best interests of the children to terminate Ms. Guerrero’s parental rights pursuant to NRS 128.105(1)(a).**

In addition to establishing best interest pursuant to NRS 128.109(2), the district court found termination of Ms. Guerrero’s parental rights was in the best interest of the children pursuant to NRS 128.105(1)(a). I JA 138-150. Specifically, the district court found the children are flourishing “in their potential adoptive placement. Family bonds are developing and they are demonstrating an abiding sense of safety, consistency, bonding and attachment.” I JA 149. The children’s’ “best interests are served by the termination of their mother’s parental rights and the opportunity to remain in their current home.” Id.

The substantial evidence showed R.T., K.G-T., N.H-T., and E.H-T. were placed in an adoptive home with Ms. Matute where they were flourishing. III JA 598, 694; IV JA 960; V JA 1102. Ms. Matute opened her home to all four children to ensure the siblings remained together. IV JA 960; V JA 1177. Ms. Matute

demonstrated a consistent ability to meet all of the children's basic needs, as well as meet their education, physical, and medical needs. V JA 1093, 1101. Ms. Matute loves these children and R.T., K.G-T., N.H-T., and E.H-T. have demonstrated their love for Ms. Matute by being affectionate, calling her mom, and verbally expressing their love and gratitude. III JA 699-700; V JA 1094. R.T., K.G-T., N.G-T., and E.H-T. are also bonded with Ms. Matute's two sons and treat each other like siblings. V JA 1094.

Both Ms. Lopez and Ms. Seronio testified it was in the best interests of these children that Ms. Guerrero's parental rights were terminated. III JA 704-705; V JA 1219-1221. Specifically, Ms. Lopez testified it is in the best interest as to R.T., K.G-T., and N.H-T. as:

“These children have been in care for the last 28 months. Being in foster care and having CPS involved in your life is not healthy .... There is a reason why there is an ASFA law which gives a parent 12 months to reunify .... They do need permanency. They need to know this is their forever home and allow them to move on with their childhood .... Waiting around for their parent to make changes – it's been 28 months. How much more time do they have to wait? And so at this point I think it's time to let these children move on and have normal childhoods.

III JA 705. Regarding E.H-T., Ms. Seronio testified it is in his best interest that parental rights are terminated as “Ms. Guerrero has failed to make any significant changes in her life in the past year ...” to enable reunification. V JA 1221.

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Furthermore, as the foregoing established, it was determined it was in the best interests of the children to terminate parental rights given Ms. Guerrero's inability to obtain and maintain safe and stable housing, Ms. Guerrero's inability to maintain income, and Ms. Guerrero's failure to address her mental and emotional illnesses. III JA 620; V JA 1193, 1197, 1212-1213; VI JA 1275-1276. Although Ms. Guerrero was provided with more than reasonable efforts to address the issues which led to the removal of her children, she consistently demonstrated her inability to follow through with any services to comply with her CPSA. Id.

Determining termination of Ms. Guerrero's parental rights was in the best interest of all four children was not based upon poverty or the decision to place the children in a more affluent home or in "an idyllic middle-class lifestyle" as argued by the Appellant; instead, it was based upon the fact that the children are flourishing in a placement where all of their needs are being met by an individual who is mentally stable and capable of following through with the necessary steps to safely and more than adequately provide for these children. III JA 696, 697, 698; IV JA 961-963; V JA 1091-1092, 1218-1219. Ms. Matute is not middle-class; rather, she resides in three bedroom mobile home in a lower income area in Sun Valley. IV JA 956, 957. Therefore, based upon the evidence presented to the district court, there was clear and convincing evidence that it was in the best

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interest of R.T., K.-G-T., N.H-T., and E.H-T. that Ms. Guerrero’s parental rights were terminated.

**3. Whether the district court properly did not explicitly find “substantial harm” when no such finding is required pursuant to NRS 128.105(1)(b) and there is substantial evidence supporting a finding that R.T., K.H-T., N.H-T., and E.H-T. are placed at risk of substantial harm if returned to Ms. Guerrero’s care.**

There is no statutory authority mandating a finding of “serious harm to a child” to terminate parental rights as argued by Appellant. Rather, as stated in NRS 128.105, it must be proved by clear and convincing evidence that it is in the best interest of a child that his or her parents’ rights are terminated and that parental fault exists. A basis for establishing parental fault, pursuant to NRS 128.105(2)(b)(5), is “risk of serious physical, mental or emotional injury to the child if the child [was] returned to, or remain[ed] in, the home of his or her parent ....” Similarly, a basis for establishing parental fault, pursuant to NRS 128.105(1)(b)(6)(IV), is token efforts have been made by a parent “to eliminate the risk of serious physical, mental or emotional injury to the child.” However, these are two of six separate grounds upon which parental fault can be established. Moreover, to establish fault only one of the six separate grounds must be proven.

If the Court determines that a finding pursuant to NRS 128.105(1)(b)(5) or NRS 128.105(1)(b)(6)(IV), or even a finding of “serious harm to a child” is

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required to terminate Ms. Guerrero's parental rights , WCDSS provided substantial evidence at trial to make such a finding.

Specifically, Ms. Lopez and Ms. Seronio testified the removal of these children from Ms. Matute's care and the separation of these siblings would be detrimental to the children and would result in serious physical, emotional, or mental injury if they were placed back into Ms. Guerrero's care. III JA 704; V JA 1220. Ms. Lopez indicated "these children are very attached to Ms. Matute .... This is their home. It would be ripping them from their home again, and so that would be very emotional and traumatic for them." III JA 704. Ms. Seronio testified, in regards to E.H-T., "Ms. Guerrero is currently in an unstable environment and [E.H-T.] is bonded with his caregivers;" thus, if he were returned to Ms. Guerrero's care, there is a risk of serious physical, mental, or emotional injury. V JA 1220.

R.T., K.G-T., and N.H-T. have been placed outside of Ms. Guerrero's care in excess of 28 months and E.H-T. has been placed outside of Ms. Guerrero's care for more than half his life due to Ms. Guerrero's failure to follow through and address the reasons for their removal. Id. The district court found, at the time of trial, Ms. Guerrero had no source of income, had no stable residence at which the children could be placed, and had not addressed her mental and emotional illnesses. I JA 138-152. This left the children at an "increased and untenable risk

of re-removal” if placed back in Ms. Guerrero’s care. I JA 149. Additionally, the district court found “Ms. Guerrero has made efforts to assume all of her responsibilities as a parent but falls short in each of the important areas required.” Id. The district court found it “is uncertain as to whether or not [Ms. Guerrero] can achieve” stable and safe residence, income, and address her mental and emotional illnesses. Id.

Therefore, based upon Ms. Guerrero’s choice to not engage in services and follow through with said services to effectuate reunification with her children, Ms. Guerrero has placed these children at risk of serious harm if returned to her care. Moreover, Ms. Guerrero’s failure to obtain income, housing, and address her mental and emotional illnesses is harmful to these children as it caused them to remain in the care and custody of WCDSS. Likewise, given the current placement of the children, the length of time placed with Ms. Matute, and their bond to Ms. Matute and her family, these children are placed at risk of serious physical, mental, or emotional harm pursuant to NRS 128.105(1)(b)(5) and NRS 128.105(1)(b)(6)(IV), if reunified with Ms. Guerrero.

## **VII. CONCLUSION**

Pursuant to the foregoing authorities, the District Court’s ruling was well supported by statutory, federal, and case law authority. When this Honorable Court reviews the entire record of this case, it will find the record contains

substantial evidence support the District Court's findings that parent fault grounds exist, as well as substantial evidence supporting the District Court's finding that it is in the best interest of R.T., K.G-T., N.H-T., and E.H-T. that Ms. Guerrero's parental rights were terminated. Thus, Respondent respectfully requests this Honorable Court affirm the District Court's ruling in its entirety and uphold the termination of Ms. Guerrero's parental right to ensure the best interests of R.T., K.G-T., N.H-T., and E.H-T. will continue to be served.

Dated this 22nd day of September, 2016.

CHRISTOPHER J. HICKS  
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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 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 12,354 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

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sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 22nd day of September, 2016.

CHRISTOPHER J. HICKS  
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**CERTIFICATE OF SERVICE**

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

John Reese Petty  
Chief Deputy Public Defender

Dated this 22nd day September, 2016.

\_\_\_\_\_  
/s/ C. Mendoza  
C. Mendoza