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court²⁷ collect the application fee from the nonsupporting parent.²⁸

Prior to the enactment of Chapter 418, all hearings for the enforcement of child support obligations were governed by the rules of evidence.²⁹ Chapter 418 provides that strict adherence to the rules of evidence no longer is required,³⁰ but those rules of evidence prescribed in the Administrative Procedure Act must be followed.³¹ In addition, Chapter 418 permits the affidavit of an obligee³² not present at the hearing to be admitted into evidence.³³ Finally, Chapter 418 authorizes the district court to appoint a qualified person to act as special master³⁴ at the hearing³⁵ for any case brought under the Reciprocal Enforcement of Support Act.³⁶

27. *Id.* §130.043 (definition of responding court).

28. *Id.* §§130.160 1, 126.021 2 (definition of nonsupporting parent).

29. *See* STATUTES OF NEVADA 1969, c. 346, §17, at 605 (amending N.R.S. §130.210); NEV. R. CIV. P. 43 (establishes evidence rules).

30. *See* N.R.S. §130.210 1.

31. *See id.* §233B.123 (providing for testimony under oath, cross-examination not limited by direct, judicial notice, receipt of copies of relevant evidence, and exclusion of irrelevant evidence).

32. *Id.* §130.042 (definition of obligee).

33. *Id.* §130.210 1.

34. *See* NEV. R. CIV. P. 53 (definition of special master).

35. N.R.S. §130.115 2.

36. *Id.*

Domestic Relations; termination of parental rights

N.R.S. §128.— (new); §§62.197, 128.005, 128.010, 128.012, 128.014, 128.018, 128.020, 128.030, 128.050, 128.090, 128.100, 128.105, 128.110, 128.120 (amended).

SB 654 (Committee on Judiciary), STATS 1981, Ch 718

AB 626 (Committee on Judiciary), STATS 1981, Ch 553

Chapter 553 augments the process for handling a child who has been removed from the home because of neglect, delinquency, or lack of supervision or other care.¹ Chapter 718 concerns termination of the fundamental right of parents to custody and control of their minor children,² expanding and defining the procedure and making it consistent with criminal statutes for child abuse and neglect.³

1. *Compare* N.R.S. §62.197 with STATUTES OF NEVADA 1973, c. 705, §15, at 1349.

2. *See* N.R.S. §128.— 3 (definition of a child). *See generally* 59 AM. JUR. 2d *Parent and Child* §§9-10, 39-40 (1971).

3. *Compare* N.R.S. §128.— 4 with N.R.S. §§200.501, 200.5011.

Termination of Parental Rights

Prior to enactment of Chapter 718, the law allowed termination of the parent's custodial rights only upon a judicial finding of abandonment⁴ or neglect⁵ of the child and unfitness⁶ of the parent, and upon a finding that only token efforts had been made by the parents to remedy the conditions diminishing their suitability.⁷ In addition, the father's parental rights could be terminated if he abandoned the mother.⁸ Focusing on the continuing needs of the child for proper physical, mental, and emotional growth and development,⁹ Chapter 718 provides that a court order for termination may be made on the grounds that it is *in the child's best interest*.¹⁰ Relevant considerations now also entail risk of serious physical, mental, or emotional injury to the child if he or she remains in or is returned to the home¹¹ and efforts by the parents to eliminate these risks.¹² Chapter 718 defines physical, mental,¹³ or emotional injury to include excessive corporal punishment,¹⁴ sexual abuse,¹⁵ and inadequate subsistence, education, or medical or surgical care when the parent had or was offered financial or other reasonable means to properly provide for the child.¹⁶ Failure by specific acts or omissions to provide adequate care, supervision, or guardianship so that governmental¹⁷ or judicial intervention is required by law also constitutes an injury.¹⁸ Chapter 718 specifies, however, that an injury has *not* occurred if the parent elects to rely upon nonmedical remedial treatment in the practice of religious beliefs if the treatment is permitted under Nevada law.¹⁹ In addition, Chapter 718 now defines abandonment to include leaving a child unclaimed for three months in circumstances where the identity of the parents is unknown and cannot

4. See *id.* §128.012 (definition of child abandonment).

5. See *id.* §128.014 (definition of child neglect).

6. See *id.* §128.018 (definition of parental unfitness).

7. See STATUTES OF NEVADA 1975, c. 549, §10, at 964 (enacting N.R.S. §128.105).

8. See *id.*

9. Compare N.R.S. §128.005 with STATUTES OF NEVADA 1975, c. 549, §2, at 963.

10. See N.R.S. §128.105. See generally Browning & Weiner, *The Right to Family Integrity: A Substantive Due Process Approach to State Removal and Termination Proceedings*, 68 GEO. L.J. 213 (1979); 43 C.J.S. *Infants* §61.

11. See N.R.S. §128.105 4.

12. See *id.* §128.105 5(d) (token efforts are insufficient).

13. See *id.* §128.— (definition of a mental injury).

14. See *id.* §128.— 1(a).

15. See *id.* §128.— 1(b). See also *id.* §200.5011.

16. See *id.* §128.— 1(c).

17. See *id.* §200.504.

18. See *id.* §128.— 1(d).

19. See *id.* §128.— 2. See generally Mitchell, *In Re Phillip B: What Happened to the Best Interests of the Child?*, 12 U. Tol. L. Rev. 151 (1980) (discussion of state intervention in medical care).

be ascertained by diligent efforts.²⁰ Furthermore, abandonment by *either* spouse of the other can now result in the termination of the parental rights of the abandoning spouse.²¹ Also, parental unfitness no longer consists of permitting children to associate with vagrants, vicious or immoral persons, or to live in a disreputable place.²² A child in these circumstances, however, is still considered neglected.²³ Finally, in addition to the other considerations for a finding of parental neglect or unfitness, Chapter 718 states that the court must consider any emotional or mental illness or deficiency of the parent and excessive use of alcohol or drugs that consistently renders the parent unable to care for the child's needs for extended periods,²⁴ conviction of a felony if the nature of the crime indicates unfitness,²⁵ unexplained injury or death of a sibling of the child,²⁶ and failure of reasonable efforts by the appropriate agencies to reunite the family.²⁷

Concerning the termination petition, Chapter 718 requires the inclusion of the child's age and identity of the person with physical custody or control.²⁸ Chapter 718 also designates the termination proceedings as civil and governed by Nevada Rules of Civil Procedure,²⁹ sets the standard of proof at a preponderance of the evidence,³⁰ and states that information in a report filed pursuant to the criminal statutes for child abuse and neglect³¹ may not be excluded from court proceedings by invoking any privilege.³² While prior law permitted the child and petitioner in the termination proceeding to receive appointed counsel,³³ Chapter 718 now states that counsel is to be appointed for the child, and that the attorney will serve as the child's guardian *ad litem*³⁴ for all proceedings including appeals and rehearings.³⁵ Parents may be represented by counsel, but counsel will be appointed only if the parents are indigent.³⁶ Compensation for court-appointed counsel is based on the

20. Compare N.R.S. §128.012 with STATUTES OF NEVADA 1975, c. 549, §8, at 964.

21. Compare N.R.S. §128.105 6 with STATUTES OF NEVADA 1975, c. 549, §10, at 964.

22. Compare N.R.S. §128.018 with STATUTES OF NEVADA 1975, c. 549, §8, at 964.

23. See N.R.S. §128.014 4.

24. See *id.* §128.— 1, 3.

25. See *id.* §128.— 5.

26. See *id.* §128.— 6.

27. See *id.* §128.— 7.

28. Compare N.R.S. §128.050 2(b), (d) with STATUTES OF NEVADA 1975, c. 549, §16, at 966.

29. See N.R.S. §128.090 2.

30. See *id.* §128.090 3. See generally Sigmond, *Involuntary Termination of Parental Rights: The Need for Clear and Convincing Evidence*, 29 AM. U. L. REV. 771 (1980).

31. See N.R.S. §§200.501-200.509.

32. See *id.* §128.090 4. See also *id.* §§49.015, 49.025.

33. See STATUTES OF NEVADA 1953, c. 161, §10, at 187 (enacting N.R.S. §128.100).

34. BLACK'S LAW DICTIONARY 635 (5th ed. 1968) (definition of guardian *ad litem*).

35. See N.R.S. §128.100 1.

36. See *id.* §128.100 2. See generally Mitchell, *'Indigents' Right to Counsel in Civil Litigation:*

same standards used for attorneys appointed to criminal cases.³⁷ With the enactment of Chapter 718, provisions allowing for temporary orders terminating parental rights are eliminated.³⁸ Consequently, a court may only order a final termination of parental rights.³⁹ In addition, Chapter 718 provides definitions⁴⁰ of a case plan which has the objective of either reuniting the family or freeing the child for adoption if the parents do not comply with the plan.⁴¹

When the decision to terminate parental rights involves children not in the physical custody of the parents, the court is to consider⁴² the child's condition and needs and, if the child is capable of expressing them, his or her desires.⁴³ In addition, important considerations also include social services available to the parents that will facilitate a reunion with the child⁴⁴ and whether additional services would be helpful in bringing about lasting parental adjustment within a predictable time.⁴⁵ Efforts made by the parents, including financial assistance for maintenance and regular contact with the child or his or her custodian, that will result in a change in the living conditions of the parents that works to the benefit of the child are also relevant concerns.⁴⁶

When a child in the custody of a public or private agency has been placed in a foster home and the agency initiates adoption proceedings on behalf of the foster family,⁴⁷ the court must evaluate the appropriateness of adoption by considering the extent to which the child has become integrated into the foster home.⁴⁸ In addition, the permanence of the foster family as a unit,⁴⁹ the length of time the child has lived with the foster family, and the desirability of his or her continuing to live with them must be considered.⁵⁰ The court must also make comparisons between the child's parents and the foster family concerning

Heller High Water in Ohio, 12 U. Tol. L. Rev. 131 (1980) (discussion of the constitutional issues involved).

37. See N.R.S. §128.100 3. See generally *id.* §7.125 (fee schedule).

38. Compare N.R.S. §§128.110, 128.120 with STATUTES OF NEVADA 1975, c. 549, §17, at 966 (amending N.R.S. §128.110) and STATUTES OF NEVADA 1953, c. 161, §12, at 187 (enacting N.R.S. §128.120).

39. See N.R.S. §§128.110, 128.120 (the termination order is conclusive and may not be changed, modified, or set aside except on appeal).

40. See *id.* §128.— 2 (definition of a case plan).

41. See *id.* §128.—.

42. See *id.* §128.—.

43. See *id.* §128.— 2.

44. See *id.* §128.— 1.

45. See *id.* §128.— 4.

46. See *id.* §128.— 3.

47. See *id.* §128.—.

48. See *id.* (important considerations include familial identity and willingness of the foster family to treat the child as a permanent family member).

49. See *id.* §128.— 5.

50. See *id.* §128.— 4.

the best interests of the child.⁵¹ Any other factors relevant to the particular case may also be considered by the court.⁵²

Child Placement Outside the Home

Chapter 553 places more emphasis on the non-delinquent child than prior law.⁵³ In addition to the existing requirement that the probation officer or other authorized agency make a predisposition study and report to the court concerning specified matters about the child,⁵⁴ Chapter 553 requires that the agency with custody of the child or responsibility for the child's placement file a case plan with the court.⁵⁵ This plan must include a statement of the social history of the family and child,⁵⁶ the undesirable conditions which require removal of the child from the home,⁵⁷ and whether removal was a result of judicial determination that it was in the child's best interests.⁵⁸ Additionally, the case plan must discuss possible harm to the child as a result of removal,⁵⁹ attempts made by the agency to avoid removal,⁶⁰ and the wishes of the child concerning the matter.⁶¹ Furthermore, the case plan must have a description of efforts made by the agency to either return the child to the home or find permanent placement.⁶² This includes programs available to the family to prevent further harm, why the programs might be useful, and a plan assuring availability of the services,⁶³ or a description of the home or institution in which the child could be placed, a plan for assuring proper care, and a description of the child's needs.⁶⁴

51. *See id.* §§128.— 1 (emotional ties with the child), 128.— 2, 3 (ability to fulfill the child's needs), 128.— 6 (moral fitness and mental and physical health), 128.— 7 (the experiences of the child in the home, school and community).

52. *See id.* §128.— 8.

53. Compare N.R.S. §62.197 1 with STATUTES OF NEVADA 1973, c. 705, §15, at 1349. *See also* N.R.S. §62.128.

54. *See* N.R.S. §62.197 1(a).

55. *See id.* §62.197 1(b).

56. *See id.* §62.197 1(b)(1).

57. *See id.* §62.197 1(b)(3).

58. *See id.*

59. *See id.* §62.197 1(b)(4).

60. *See id.* §62.197 1(b)(5).

61. *See id.* §62.197 1(b)(2).

62. *See id.* §62.197 1(b)(8).

63. *See id.* §62.197 1(b)(6).

64. *See id.* §62.197 1(b)(7).