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Summary of In re A.B., 128 Nev. Adv. Op. 70

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In re A.B., 128 Nev. Adv. Op. 70 (December 27 2012)[1]

FAMILY LAW – REVIEWING DEPENDENCY MASTER'S FINDINGS OF FACT

Summary

The court considered how a dependency master's finding of facts and recommendations should be reviewed by the juvenile dependency judge.

Disposition/Outcome

Although a juvenile court should give serious consideration to a dependency master's finding of facts and recommendations, the master's findings are not binding. The court may rely on the master's findings if they are supported by evidence and thus not clearly erroneous.

Factual and Procedural History

Imani is the daughter of Ramona and the half-sister to A.B. While attending college, Imani alleged that Gregory had sexually abused her when she lived with Gregory and Ramona. Following an investigation, the Department of Family Services ("DFS") filed an abuse and neglect petition and sought to have A.B. declared a child in need of protection.

A dependency master held an evidentiary hearing where she accepted testimony from a DFS specialist and a detective regarding statements that Imani had made to them. That testimony was objected to as hearsay, but the master overruled the objection. Dr. Palasky testified that she had diagnosed Imani with schizoaffective disorder and that Imani had difficulty differentiating reality from mere thoughts. The dependency master found that A.B. was a child in need of protection, Gregory had abused Imani, and Ramona had neglected A.B. by not providing proper care after Gregory's conduct.

Gregory and Ramona objected to the findings. The juvenile court conducted a hearing and found there was no corroborative evidence. Thus the court sustained the objection and dismissed the neglect and abuse petition. DFS filed a petition for a writ of mandamus to challenge the juvenile court's order.

Discussion

I. Although a writ of mandamus is an extraordinary remedy, it can be appropriate in a juvenile proceeding concerning child custody.

Generally, writ relief is available only if there is no adequate and speedy legal remedy.[2] However, a writ of mandamus is appropriate in an action arising from a juvenile proceeding and concerning child custody.[3]

II. The decision rests with the juvenile court and a dependency master's findings of facts and recommendations are only advisory, not binding.

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[2] Nev. Rev. Stat. 34.170.

[3] *See* Matter of Guardianship of N.S., 122 Nev. 305, 311, 130 P.3d 657, 661 (2006).

A dependency master may hear a case and give the supervising judge their written findings of facts and recommendations, but the recommendation will not "become effective until expressly approved by the supervising district court judge."[4] After the recommendation has been filed, a party may object and the judge can affirm the recommendations, alter them, remand them to the master, or conduct a trial on the issues.[5] The final determination belongs to the juvenile court, which can conduct its own fact finding or rely on the master's findings as long as they are supported by evidence and not clearly erroneous.[6]

III. The juvenile court did not abuse its discretion and the petition for the writ was denied.

The juvenile court held a hearing on the objection and after considering all arguments properly exercised its discretion in setting aside the master's findings and recommendations. It found that even if it were to admit the hearsay evidence, there was insufficient corroborative evidence. The record supported the juvenile court's decision and it was within its discretion.

Conclusion

The court found that the juvenile court had properly exercised its discretion in reviewing the master's findings and recommendations. There was insufficient evidence indicating abuse or neglect. Therefore, the request for the writ of mandamus was denied.

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[4] Nev. E.D.C.R. 1.46(g)(9).
[5] Nev. E.D.C.R. 1.46(g)(7).
[6] Here the Supreme Court approving refers to Maryland's system as discussed in Wenger v. Wenger, 402 A.2d 94, 97 (Md. Ct. Spec. App. 1979).