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***In the Matter of the Parental Rights of N.D.O.*, 121 Nev. Adv. Op. 36
(2005).¹**

FAMILY LAW – RIGHT TO COUNSEL

Summary

The Nevada Supreme Court upheld Eighth Judicial District Court, Family Court Division's termination of parental rights despite a claim of ineffective counsel. The Nevada Supreme Court concluded that the right to counsel must be determined on a case-by-case basis and be consistent with the United States Supreme Court's decision in *Lassiter v. Dept. of Social Services*.²

Disposition/Outcome

The Nevada Supreme Court holds that no constitutional right exists to counsel in a parental termination proceeding and consequently does not consider appellant's ineffective-assistance-of-counsel claim.

Factual and Procedural History

Appellant Letesheia O. challenges the termination of her parental rights to her three children on the basis that her counsel was ineffective. Letesheia had a cocaine habit and had been convicted on more than 30 theft counts. Her children lived with their maternal grandmother in Mississippi. Letesheia only minimally complied with a case plan designed to give her counseling in parenting, substance abuse, and domestic violence. She escaped from prison and was rearrested when she went to her caseworker's office to inquire about her children. The district court terminated her parental rights, and the parental rights of the putative father, finding that the State had proven by clear and convincing evidence that the statutory parental fault grounds of unfitness, failure of parental adjustment and token efforts to avoid being an unfit parent were met. Further, the district court held that the termination of parental rights was in the children's best interests so that the maternal grandmother could adopt the children.

Discussion

Letesheia argued that she received ineffective assistance of counsel because her trial attorney failed to object to hearsay evidence and because her trial attorney failed to object to questions about her felony convictions.

The Court noted that NRS 128.100(2) provides a district court with the discretion to appoint counsel for an indigent parent in parental rights termination proceedings. Consistent with *Lassiter*, no absolute right to counsel exists under the United States Constitution's Fourteenth Amendment in parental right termination proceedings. At a minimum, that states must balance the interests to determine if due process demands counsel. NRS 128.100 allows for that due-process balancing. Consequently, no absolute right to counsel in termination proceedings exists in Nevada.

¹ By Timothy J. Geswein

² 452 U.S. 18 (1981).

In this matter, the district court appointed counsel without any due process analysis. Consequently, as a threshold matter, the Court analyzed Letesheia's constitutional right to counsel before determining if her ineffective-counsel claim could proceed.

The Court considered the strong interests at stake: the parental rights of Letesheia and the State's interest in protecting children. Further, the Court considered the risk of an erroneous decision and noted that the hearsay testimony and felony convictions information was available to the district court because of the nature of Division of Child and Family Services' reporting. As a consequence, there were no particular intricacies that would undermine confidence in the district court's result. The balancing of interests revealed that Letesheia was not constitutionally entitled to counsel. Since she was not entitled to counsel, the court did not consider her ineffective-counsel claim.

Conclusion

The Nevada Supreme Court held that the district court properly exercised its discretion in appointing counsel and that Letesheia was not constitutionally entitled to counsel. As due process did not mandate appointment of counsel, the Court did not consider Letesheia's claim of ineffective counsel. The district court's termination of parental rights was upheld.