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### Summary of State, Div. Child & Family Servs. v. Dist. Ct., 120 Nev. Adv. Rep. 50

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*Nevada Law Journal*

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## CIVIL PROCEDURE – FAMILY LAW

### Summary

The State sought a writ of mandamus or prohibition challenging the district court's oral contempt order and sanctions.

### Disposition/Outcome

Petition granted. The Nevada Supreme Court issued the writ directing the district court to vacate its order holding the Division of Child and Family Services ("DCFS") in contempt of court.

### Factual & Procedural History

J.M.R., the real party in interest, came into DCFS custody when he was three years old.<sup>2</sup> Since then, he has been in and out of foster and group homes. J.M.R. suffers from various mental disorders.

In 2000, J.M.R. was placed in a foster home and his development continued to be monitored. In October 2000, Joyce Mahoney, a DCFS social worker, wrote a report acknowledging J.M.R.'s continued behavioral problems<sup>3</sup>, but recommended that he remain in his current foster placement. Due to the behavioral problems, Dr. Ann Childress recommended committing J.M.R. to Spring Mountain psychiatric facility until his behavior stabilized.

At the October 8, 2003 permanency review, DCFS informed the district court of about J.M.R.'s Spring Mountain treatment. Dr. Childress had not yet prepared a report, nor did she appear at the hearing.<sup>4</sup> The district court was concerned that DCFS acted hastily in committing J.M.R. to the treatment facility and orally ordered J.M.R.'s release, despite medical advice to the contrary. Mahoney stated that DCFS would release J.M.R. later that day.

DCFS failed to release J.M.R. On October 13, 2003, the district court held a hearing on the matter. DCFS explained that it understood the court's oral order to mean it should release J.M.R. "as soon as possible" as opposed to "immediately" and that it did not believe J.M.R.'s condition to be sufficiently stable for release. The court ordered briefing on whether there was a valid court order.

On October 20, 2003, DCFS had still not released J.M.R. DCFS alleged that the order was ambiguous, but the district court disagreed and orally held DCFS in contempt.

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<sup>1</sup> By: Shane Jasmine Young.

<sup>2</sup> The court does not specify J.M.R.'s current age.

<sup>3</sup> One example of such behavioral problems included an incident at ROCK wherein J.M.R. stomped at another child's leg.

<sup>4</sup> Dr. Childress did not prepare a report until October 10, 2003.

DCFS was fined \$500 per day for every day J.M.R. remained at Spring Mountain. On October 23, 2003, the Nevada Supreme Court temporarily stayed the contempt order pending review of DCFS' petition.

### **Discussion**

After discussing the purpose and standard for writ relief, the Nevada Supreme Court addresses the district court's jurisdiction to issue a valid order for J.M.R.'s release. In addition to sound public policy regarding a juvenile court's ability to give orders concerning a child's placement or treatment, authority for jurisdiction lies within Nevada Revised Statutes ("NRS") 432B.560(1)(a)<sup>5</sup> and 432B.580<sup>6</sup>.

With respect to the validity of the district court's oral order for J.M.R.'s release, the Nevada Supreme Court held that a substantive order (not merely an administrative order) is not effective until the district court enters it. "Entry" is the filing of a signed, written order with the court clerk.<sup>7</sup>

The court analogized the case at bar to *Rust v. Clark County School District*<sup>8</sup> to conclude: "Similar to *Rust*, the district court's oral pronouncement was not merely administrative or intended to restore courtroom decorum; it pertained to the substantive outcome of the dispute." Due to the need for clarity and lack of ambiguity, the court held that a dispositional court order that is not administrative in nature, but deals with the procedural posture or merits of the underlying controversy, must be written, signed and filed before becoming effective.<sup>9</sup>

### **Conclusion**

The district court had jurisdiction to issue its release order without finding that the DCFS had acted arbitrarily and capriciously. Nonetheless, the district court's oral release was ineffective and did not substantiate the subsequent contempt order. Such dispositional orders must be written, signed and filed before they become effective. DCFS' petition was therefore granted and the district court was ordered to vacate its order holding DCFS in contempt for violating its oral release order.

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<sup>5</sup> The statute provides, in pertinent part, that the court may order "[t]he child . . . to undergo such medical, psychiatric, psychological, or other care or treatment as the court considers to be in the best interests of the child." NEV. REV. STAT. 432B.560(a)(1).

<sup>6</sup> This statute requires that the district court to assess the appropriateness of the child's placement. See NEV. REV. STAT. 432B.580.

<sup>7</sup> NEV. R. APP. P. 4(a)(3).

<sup>8</sup> 103 Nev. 686, 747 P.2d 1380 (Nev. 1987).

<sup>9</sup> The court noted, however, that this opinion does not preclude a court from summarily punishing a party who commits contempt pertaining to case management issues, scheduling, administrative matters or emergencies that do not allow a party to gain an advantage.