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Gordon v. Geiger, 133 Nev. Adv. Op. 69 (Sept. 27, 2017)

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FAMILY LAW: CHILD CUSTODY

Summary

The Court held that, without notice, a permanent change to custody and visitation violates due process rights, and the affected party must be given the opportunity to respond and rebut the evidence. Further, when the district court conducts an alternative interview with a child, the interviews must be recorded and comply with the Uniform Child Witness Testimony by Alternative Methods Act.

Background

After their divorce, Jennifer Gordon and Mathew Geiger were both given joint legal custody of their two children; however, the district court awarded Gordon primary physical custody, leaving Geiger with limited visitation every other weekend. Subsequently, Geiger was arrested and incarcerated for 23 days for parole violation, which Geiger contested. This, among other reasons, lead Gordon to file a motion to modify custody, which would make Gordon sole legal and physical custodian and remove all of Geiger’s visitation. Before an evidentiary hearing, the district court judge interviewed both minor children individually and off the record.

At the evidentiary hearing, the district court ruled that Geiger did not violate his parole and lacked notice of his warrant. Thus, the court denied Gordon’s motion for sole legal custody. Despite the court already making its decision, it allowed for closing arguments, and Geiger’s counsel orally requested expansion of Geiger’s visitation. The court issued a sua sponte order to permanently change visitation, expanding Geiger’s visitation from every other weekend to the first four weekends of every month. The court made this ruling based on the unrecorded child interviews as well as an unsubstantiated CPS report.

Discussion

Due process protects the interest parents have in the custody of their children.² Thus, “a party threatened with [the] loss of parental rights must be given [an] opportunity to disprove evidence presented.”³ Here, the sua sponte order violated Gordon’s due process rights because there was a permanent change to Gordon’s custody, she never received notice that Geiger would be requesting increased visitation, and she was never given an opportunity to rebut the evidence. Furthermore, the district court cannot rely on the unrecorded interviews or an unsubstantiated CPS report because neither were admitted into evidence. Thus, Gordon was denied due process.

¹ By Rex Martinez.

² *Rico v. Rodriguez*, 121 Nev. 695, 704, 120 P.3d 812, 818 (2005).

³ *Wallace v. Wallace*, 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996) (citing *Wiese v. Granata*, 110 Nev. 1410, 1413, 887 P.2d 744, 746 (1994)).

Uniform Child Witness Testimony by Alternative Methods Act

Moreover, the court clarifies that child interviews must be recorded and must abide by the Uniform Child Witness Testimony by Alternative Methods Act.⁴ Judges are permitted to allow a child witness to testify by an alternative method if it is in the best interest of the child or enables the child to communicate with the finder of fact.⁵ However, both parties should be reasonably notified and the testimony must be recorded.⁶ Also, both parties must be afforded a fair and full opportunity to examine or cross-examine the child witness.⁷ Here, the district court did not follow NRS. 50.500 *et seq.* when it conducted the interviews off the record.

Conclusion

The Court reversed and remanded the district court's decision because the sua sponte order denied Gordon due process. In addition, the district court erred in disregarding NRS 50.500 *et seq.* by not recording the children's interviews.

⁴ NEV. REV. STAT. § 50.500 *et seq.* (2003).

⁵ *See Id.* § 50.580(2).

⁶ *See Id.* § 50.570(2).

⁷ *See Id.* § 50.610.