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Michael McGrady

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In re Parental Rights as to L.L.S., a Minor, 137 Nev. Adv. Op. 22 (May 27, 2021)¹
TRP PROCEDURES AND HEARING MASTERS

Summary

The Nevada Supreme Court recently considered whether a hearing master may preside over a termination of parental rights (“TPR”) trial. The Court held that due process requires the TPR trial must initially be heard before a district judge.

Facts and Procedural History

This case arose when Tahja L., then a teenager, surrendered her six-month-old daughter, L.L.S. into a Department of Family Services (“DFS”) facility. Initially, Tahja only wanted to temporarily place L.L.S. under DFS care so she could complete high school. She lacked the family and financial resources to care for her daughter. Despite being informed that she would have difficulty regaining custody after surrender, Tahja did so feeling that L.L.S. was better off in DFS custody.

DFS filed a petition under NRS 432B.330 alleging that the child needed protection due to neglect.² The matter was assigned to Hearing Master David Gibson. Tahja plead no contest, L.L.S. was placed in foster care, and a plan was designed to unify mother and daughter. DFS was unsatisfied with Tahja’s progress under the plan and moved to terminate parental rights. L.L.S. objected that a district judge, not a hearing master, should conduct the trial but Tahja did not join the petition. The juvenile court denied the objection, holding it had the power to appoint any qualified person to conduct the proceedings in the same manner as a district judge would. It further concluded that it had the authority to delegate the hearing because the term “juvenile court” includes a master to whom the juvenile court delegates authority.³ The court also considered Eighth Judicial District Court Rules that favored “one-family-one-judge.” Finally, the court concluded that NRCP 53 permitted the rule as it constitutes best practices and exceptional conditions.

Before trial took place, Hearing Master Gibson was elevated to the bench, becoming District Judge Gibson. The matter was reassigned to Hearing Master Holly Roys, who recommended to terminate Tahja’s parental rights after hearing from several witnesses and considering the exhibits and orders filed. Tahja objected to the findings but did not request a trial de novo. The juvenile court heard the objection, offered the opportunity to present additional evidence, and no party did. Thus, the court rejected the challenge and terminated her parental rights. The court took the appeal seriously, including reviewing the entire video of the proceeding, but found that termination was in L.L.S.’s best interests. Tahja appealed, arguing the juvenile court lacked the authority to appoint a master to preside over the trial in the TPR proceeding. L.L.S. agrees, consistent with her prior position.

¹ By Michael McGrady.

² Nev. Rev. Stat. § 432B.330 (2020).

³ Nev. Rev. Stat. § 62A.180(2) (2020).

Discussion

The Nevada Constitution allows the Legislature to permit referees, or masters, in district courts.⁴ The legislature has exercised this authority by enacting laws permitting masters to act as referees in district courts.⁵ The Legislature has provided that TPR proceedings must be conducted by a court⁶ and a juvenile court includes a master only if “the juvenile court delegates authority to the master to perform a specific act in accordance with the Constitution of the state of Nevada.”⁷

This Court determined that a hearing master presiding over Tahja’s TPR trial violated her right to due process. The Nevada Constitution states, “no person shall be deprived of life, liberty, or property without due process of law.”⁸ Using the United States Supreme Court’s analysis of parental rights, this Court found that there is a vital interest in preventing the irretrievable destruction of their family life,⁹ and that due process requires states to provide parents with fundamentally fair procedures in TPR trials.¹⁰

This Court chose to adopt the three-part test which considers the balance of (1) the parent’s interest and the (2) the risk of erroneous deprivation against (3) the government’s interest.¹¹ Here, the Court found the parent’s interest to be as strong as it could be. Before turning to the second and third prongs of the test, the court reviewed what a hearing master is and does. A hearing master is typically, if not always, an attorney according to the Eighth Judicial District Court Rules of Practice 1.46(a)(3). Further, the master must be impartial and attend a course designed for the training of new judges.¹² Despite this, a court may not transfer judicial decision-making power to a master.¹³ Instead, the judge must review the evidence and testimony used by the master to make a recommendation and make its own decision. As it applies to the second and third steps of the test, this Court addressed that if a judge does not order a de novo fact-finding, parents having to argue their case to a hearing master without power of decision constitutes erroneous deprivation. However, the Court notes that this does not necessarily make the use of masters invalid, and in most cases it does not. But as it relates to TPR proceedings, the state’s interests do not outweigh those of the parents and the need to avoid erroneous deprivation.

The Court then addresses the interest in efficiency, as conservation of judicial resources is a compelling concern. This Court decided that there is little efficiency by having a master preside over a TPR trial, as a juvenile court must still thoroughly review the evidence and potentially conduct a de novo fact finding to make a decision. This case highlights the inefficiency even more as the district judge watched the entire trial before making a decision. In a sense, this Court decided that if the judge was doing to do this, he may as well have overseen the matter from the beginning. The Court then turns to Legislative intent regarding family court judges and hearing masters. Specifically, the Court cites to the choice to increase the number of family court judges by 6 in an attempt to eliminate the use of hearing masters in the time-

⁴ Nev. Const. art. 6, § 6(2)(a).

⁵ *Henry v. Nev. Comm’n on Judicial Discipline*, 135 Nev. 34, 36 (2019).

⁶ Nev. Rev. Stat. § 432B.5901-5908 (2020).

⁷ Nev. Rev. Stat. § 62A.180(2)(A) (2020).

⁸ Nev. Const. art. 1, § 8(2).

⁹ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

¹⁰ *In re Parental Rights as to M.F.*, 132 Nev. 209, 212 (2016).

¹¹ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

¹² Nev. R. Civ. Pro. 53(b)(3)-(4); Nev. Rev. Stat. § 62B.020(3) (2020).

¹³ *In re A.B.*, 128 Nev. 764, 771 (2012).

sensitive area of dependency.¹⁴ Ultimately, the Court made a finding that hearing masters do not make the system more efficient.

Conclusion

This Court found that hearing masters presiding over TPR trials violates due process. The gravity of the subject material is too great to assign these trials to a hearing master, particularly when it must be reviewed again by a district judge. As a result, this Court determined that the district judge was required to hear the TPR trial in the first instance and remands the matter.

Dissent

The Dissent, authored by Justice Pickering, believed the majority should have affirmed the district court's termination of Tahja's parental rights based on Tahja's lack of objection. Tahja did not request a hearing de novo, thereby waiving her right, and declined the invitation to supplement the evidentiary record. Accordingly, the minority argues there is no basis to reverse and remand for another TPR hearing in this matter. Further, L.L.S.'s objection does not warrant the same.

The minority reviewed the procedural facts of this case, highlighting that each party was entitled to request the TPR hearing be heard before a district judge based on the order assigning Master Gibson, though this must have been done within 30 days from entry of the order. Only L.L.S. filed an objection, however the District Judge overruled citing the one-family-one-judge policy, noting that Master Gibson presided over the parties' hearings for the past two years. At trial, Tahja called no witnesses and declined to testify. After the master recommended her parental rights terminated, Tahja objected, stating they were clearly erroneous but did not state error in the hearing master presiding over the TPR hearing. Further, no hearing was requested de novo. On appeal, Tahja still did not raise due process issues. Accordingly, the minority stated the due process analysis by the majority was unprompted.

The minority addressed that the evidence supported Tahja's termination of parental rights. For example, there is a presumption of termination when a child has resided outside the home for 14 out of 20 consecutive months.¹⁵ Further, there is a presumption of termination when the parent does not comply with the terms of a case plan within six months.¹⁶ By the time the TPR hearing took place, Tahja had not had L.L.S. living with her for 24 months, and she was making limited progress on her case plan. Accordingly, the presumptions applied, and it was within L.L.S.'s best interest to have parental rights terminated.

The minority then looks to whether the issue of the hearing master was even before this Court. Tahja never objected to the master nor complied with the provisions of the Order for having a hearing. Further, the minority found that Nevada statutes do authorize the use of hearing masters in juvenile dependency and delinquency matters, including TPR proceedings. Notably, the minority cites to the same statutes as the majority, and the majority also agreed that the statute permits a hearing master if *constitutional*. The minority found the express language sufficient to have a hearing master preside over a TPR hearing. The minority found that the language plainly authorizes the use of a hearing master in TPR proceedings. Of note, the

¹⁴ Hearing on A.B. 43 Before the Senate Judiciary Comm., 80th Leg. (Nev., June 2, 2019).

¹⁵ Nev. Rev. Stat. § 128.109(2) (2020).

¹⁶ Nev. Rev. Stat. § 128.109(1)(2) (2020).

majority found that this was the case, however due process caused the matter to violate Nevada's constitution.

The minority further determined that Tahja had numerous opportunities to present her case, and did not, before a district judge and declined to. As a result, there could be no due process issues. Further, in TPR proceedings, there is a unique relationship between master and parties that permit the master to make thorough recommendations. Accordingly, the interest in TPR proceedings was found substantial by the minority which should permit the use of hearing masters to promote judicial efficiency. The minority finds that Tahja actually had every opportunity for due process, as she was afforded the opportunity before a neutral decisionmaker in the hearing master, again with a district judge, and by eliminating one of these, the majority actually takes away some of the process available to a parent. Ultimately, the minority found that Tahja did not object to the appointment of the master, therefore the majority should not have addressed this issue, and that the record provided supported termination of her parental rights regardless.