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In Re: Parental Rights as to T.M.R., 137 Nev. Adv. Op. 23 (May 27, 2021).

Luis Montañez

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NRCP 16.2(e)(4)'s MANDATE REGARDING DISCLOSURE OF NONEXPERT WITNESSES APPLIES TO TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

Summary

The Court considered whether the nonexpert witness notice requirements in NRCP 16.2 apply to termination of parental rights proceedings. The Court held that NRCP 16.2(e)(4)'s mandate regarding disclosure of nonexpert witnesses did apply to termination of parental rights proceedings. The Court concluded that while the district court's failure to apply the NRCP 16.2(e)(4)'s mandate regarding disclosure of witness was error, the error was harmless in this instance, as substantial evidence supports the district court's order terminating appellant's parental rights.

Background

Appellant Marcus H. and Dana B. are respondent T.M.R.'s birth parents. While T.M.R. was an infant, both of his birth parents lived with Dana's 100-year-old-grandmother, Gladys S. During a fight between Marcus and Dana, Marcus hit Gladys in the face and damaged her home. Charges were filed, and Marcus ultimately pleaded guilty to felony coercion and was sentenced to a minimum of 24 months and maximum of 60 months in prison.

Meanwhile, Dana was arrested for driving under the influence, while texting on a cell phone, without a driver's license, and with T.M.R. improperly restrained in the vehicle. Because both parents were incarcerated, the Department of Family Services (DFS) placed T.M.R. into protective custody and later placed him with a foster family.

DFS petitioned to terminate Marcus's and Dana's parental rights and a trial commenced.² Marcus's DFS caseworker testified that Marcus had not made timely progress on the case plan that the DFS caseworker had created to address Marcus's violent behavior and substance abuse. Instead, during the time that Marcus was out of custody, he tested positive for one drug and refused to submit to multiple other drug tests, all while minimizing his bad behavior. T.M.R.'s foster mother testified that T.M.R.'s aggressive behavior had greatly improved with time and therapy and that he had bonded with his foster family. The foster family expressed their desire to adopt T.M.R.

After the first day of trial, the State filed a notice naming Gladys as a witness. Marcus filed a motion in limine to exclude Gladys's testimony on the grounds that she was not timely disclosed pursuant to NRCP 16.2. The district court denied Marcus's motion, concluding NRCP 16.2's nonexpert witness disclosure requirements do not apply to termination of parental rights proceedings. Thereafter, Gladys testified about the altercation with Marcus, with the district court terminating Marcus's parental rights at the conclusion of trial. The court concluded that the termination of parental rights was in T.M.R.'s best interest and that parental fault for this decision existed.

Marcus appealed, arguing that the district court erred by denying his motion in limine to exclude Gladys's testimony and that the court's decision to terminate his parental rights was not supported by substantial evidence.

¹ By Luis Montañez.

² Although the trial involved termination of both Marcus' and Dana's parental rights, this opinion addresses only the proceedings regarding Marcus.

Discussion

Termination of parental rights proceedings are governed by the Nevada Rules of Civil Procedure. But the rules fail to clearly amount for disclosure requirements in such proceedings, making it unclear which rule applies to termination of parental rights. To resolve this ambiguity, the Court read these rules “in pari materia.” Rules “in pari materia” involve “the same classes of persons or things or seek to accomplish the same purpose or object.”³ To interpret the Rules “in pari materia,” NRCP 16.1, 16.2, and 16.205 “must be read and construed together, and so harmonized as to give effect to [each of] them...”⁴

The Court noted that “the unmistakable thrust of the three rules, read together, is to broadly cover the gamut of civil proceedings,” concluding that NRCP 16.2(e)(4)’s witness disclosure requirement must apply to the termination of parental rights proceedings to the extent practicable when read “in pari materia.”⁵

Additionally, the Court noted that construing Rules 16.1, 16.2, 16.205 separately and in a “vacuum and concluding that no part of any of those rules applies to termination of parental rights trials would lead to an absurd result”—that of enabling the State to ambush a parent during trial with a surprise witness.⁶ This would be contrary to established caselaw which notes that statutory construction should always avoid an absurd result and that the purpose behind the statutory scheme created by the Nevada Legislature is to assure that parental rights are not erroneously terminated and that the child’s needs are protected.

Because the State failed to notice Gladys as a witness for trial and because the termination of parental rights is the equivalent to a civil death penalty, the Court held that the district court abused its discretion by failing to exclude Gladys’s testimony pursuant to NRCP 16.2.

Nevertheless, the Court affirmed the district court’s decision to terminate Marcus’s parental rights because substantial evidence supported the district court’s termination of Marcus’s parental rights despite the admission of Gladys’s unnoticed testimony. The Court noted that Marcus failed to rebut the presumption that termination of his parental rights was in T.M.R.’s best interest and that the record supports the district court’s parental fault findings.

Conclusion

The Court affirmed the district court’s order terminating Marcus’s parental rights because substantial evidence supported such decision, even without Gladys’s testimony. However, the Court noted that the district court erred by denying Marcus’s motion in limine to exclude an unnoticed nonexpert witness during trial. When read “in pari materia” with Rule 16.1 and 16.205, Rule 16.2’s nonexpert witness disclosure requirements apply to termination of parental rights cases. This interpretation also avoids construing the statutory scheme in a way that would precipitate an absurd result and assures that parental rights are not erroneously terminated and that the child’s needs are protected.

³ State, Div. of Ins.v. State Farm Mut. Auto. Ins. Co., 116 Nev. 290, 294, 995 P.2d 482, 485 (2000) (interpreting NEV. REV. STAT. 687B.285).

⁴ Presson v. Presson, 38 Nev. 203, 208, 147 P. 1081, 1082 (1915).

⁵ In the Matter of T.M.R., 487 P.3d 783, 788 (Nev. 2021).

⁶ Id.