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**Washoe Cty. Human Servs. v. Dist. Ct., 138 Nev. Adv. Op. 87 (Dec. 29, 2022)**

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*Washoe Cty. Human Servs. v. Dist. Ct.*, 138 Nev. Adv. Op. 87 (Dec. 29, 2022)<sup>1</sup>

**NRS 432B.393(3)(c) IS CONSTITUTIONAL BECAUSE IT DOES NOT INFRINGE ON A PARENT’S DUE PROCESS RIGHTS CONCERNING CUSTODY.**

**Summary**

The Nevada Supreme Court considered this writ of mandamus as it held substantial precedential value and was a matter of first impression. Although the controversy was moot, they decided to hear the issue, as the duration of the challenges action is relatively short and a similar issue is likely to arise in the future. Further, the Court found the matter to be important, because the issue related to the protection of Nevada children. The Court held that NRS 432B.393(3)(c) is constitutional, as it does not infringe on the due process rights of parents concerning the altering or termination of custody rights.

**Background**

Washoe County Human Services Agency (WCHSA) removed a child, L.S.C., from the care of her biological parents, Porsha and Rolando, and placed the child in foster care. WCHSA filed a motion to be relieved of its statutory duty under NRS 432B.393(1) to make reasonable efforts to reunite the child with her biological parents. They argued that NRS 432B.393(3)(c) required the district court to relieve them of such duty because the Porsha and Rolando had involuntarily terminated their parental rights over L.S.C.’s sibling in the previous year. The biological parents opposed the motion and argued that NRS 432B.393(3)(c) violated their due process rights concerning their fundamental interest to have care, custody, and control of their child.

A court master recommended that the district court deny WCHSA’s motion and find NRS 432B.393(3)(c) unconstitutional, as it infringes on the fundamental parent-child relationship. The district court adhered to the court master’s recommendation and entered an order for the parents. The court master later held a permanency hearing under NRS 432B.590, which resulted in her recommendation that the district court adopt the agency’s permanency plan of adoption for L.S.C. This recommendation also suggested WCHSA should be relieved of its duty to reunite L.S.C. with her family, as it contradicted the permanency plan. The district court adopted the court master’s recommendation. WCHSA petitioned this court for a writ of mandamus to reverse the district court’s finding regarding the constitutionality of NRS 432B.393(3)(c).

**Discussion**

***We elect to consider the merits of this petition for a writ of mandamus***

The first issue of the case concerns the Court’s willingness to consider this writ of mandamus petition. The Court agreed to consider the petition, because it had previously accepted these petitions when doing so “will clarify a substantial issue of public policy or precedential value.”<sup>2</sup> Further, this Court has also considered petitions when there is “a matter of first impression.”<sup>3</sup> The Court allowed this petition to review the constitutionality of NRS 432B.393(3)(c), as it is a legal issue of first impression and does have a substantial precedential

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<sup>1</sup> By Rachel Blum.

<sup>2</sup> *Walker v. Second Judicial Dist. Ct.*, 136 Nev. 678, 684, 476 P.3d 1194, 1199 (2020).

<sup>3</sup> *Dekker/Perich/Sabatini Ltd. v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 53, 495 P.3d 519, 522 (2021).

value. However, the Court declined to review the district court's order from the NRS Chapter 432B proceeding, as a previous case had determined those specific orders were not appealable.<sup>4</sup>

***While the matter is moot, it falls under the capable-of-repetition-yet-evading-review exception to the mootness doctrine***

The second issue that arose from the case is whether a judgment could be made if the controversy was moot. This case became moot when the district court decided to relieve WCHSA of their duty to provide reasonable reunification efforts under grounds other than NRS 432B.393(3)(c). However, the Court noted that moot cases could still be considered if they concern “a matter of widespread importance capable of repetition, yet evading review.”<sup>5</sup> Furthermore, they recognized that “to satisfy the exception to the mootness doctrine, [petitioner] must show that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important.”<sup>6</sup>

The Court concluded that the petition met the three requirements set forth in *Degraw*. First, the duration of this challenge is relatively short, as dependency proceedings under NRS 432B are held “within thirty days after making any of the findings set forth in subsection 3 of NRS 432B.393.”<sup>7</sup> Second, the Court found that issues concerning a child welfare agency's duty to put forth reasonable efforts to reunite children with their biological parents is a reoccurring concern. Lastly, the Court determined this issue is important, as the constitutionality of the provision at issue affects the entire process of protecting the children of Nevada.

***NRS 432B.393(3)(c) does not violate due process because it does not infringe on a fundamental liberty interest***

After verifying the petition should be heard, the Court moved to discuss the issue of constitutionality concerning NRS 432B.393(3)(c). The district court found that NRS 432B.393(3)(c) infringes on the fundamental liberty interest of parents concerning the care, custody, and control of their children, because a finding under this statute could deprive them of parental rights under NRS 128.105(1). The district court utilized a strict scrutiny standard and determined that the statute is not narrowly tailored to serve a compelling interest, as it presumes parental fitness without consideration for current circumstances. WCHSA argued that NRS 432B.393(3)(c) does not violate a parent's due process rights. They explained that if NRS 128.105 allows for a finding under NRS 432B.393(3)(c) to establish a parental fault, infringing on a fundamental right, then NRS 128.105 would be unconstitutional, not NRS 432B.393(3)(c).

The Court agreed with WCHSA, finding that NRS 432B.393(3)(c) does not infringe on a parent's fundamental right to the care, custody, and control of their children. The Court recognized that parents are entitled to due process protections prior to the termination or alteration of parental rights.<sup>8</sup> However, they note that a finding under NRS 432B.393(3)(c) does not automatically alter or terminate parental rights, as it simply relieves the agency from their duty to exert reasonable efforts of reuniting the children and their biological parents.

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<sup>4</sup> Clark Cty. Dist. Attorney v. Eight Judicial Dist. Court, 123 Nev. 337, 342, 167 P.3d 922, 925 (2007).

<sup>5</sup> Bisch v. Las Vegas Metro. Police Dep't, 129 Nev. 328, 334, 302 P.3d 1108, 1113 (2013).

<sup>6</sup> Degraw v. Eighth Judicial Dist. Court, 134 Nev. 330, 332, 419 P.3d 136, 139 (2018).

<sup>7</sup> NEV. REV. STAT. 432B.590(1)(b) (2019).

<sup>8</sup> In re Parental Rights as to A.G., 129 Nev. At 135, 295 P.3d at 595.

## **Conclusion**

Because a finding under NRS 432B.393(3)(c) does not directly alter or terminate parental rights concerning custody, the Nevada Supreme Court found that the statute does not violate due process. Thus, the district court erred in ruling that it was unconstitutional. However, the controversy is moot, because WCHSA had their duty to exert reasonable reunification effort dismissed on another basis. Therefore, the Court denied the petition for writ of mandamus.