

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE E. SCHWIGER,
Appellant,
vs.
LISA N. SCHWIGER,
Respondent.

No. 44673

FILED

DEC 27 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

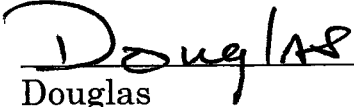
This is a proper person appeal from a district court order denying a motion to modify the divorce decree as to child custody. Eighth Judicial District Court, Family Court Division, Clark County; Steven E. Jones, Judge.

Appellant contends that his due process rights were violated when the district court failed to give him notice and an opportunity to be heard regarding a counselor's interview of the child and ensuing report.¹ We agree. In particular, the record establishes that during the district court proceedings, the court allowed respondent to submit a counselor's report stemming from an interview with the child. Appellant, who is incarcerated and was not present during the proceedings, had no knowledge of the report nor did he have any opportunity to rebut its

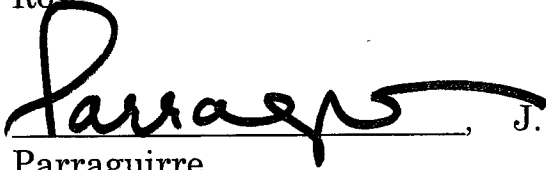
¹On June 7, 2005, appellant submitted a proper person motion for leave to file documents. See NRAP 46(b). We grant appellant's motion for leave to proceed in proper person for the limited purpose of filing his opening brief, and we direct the clerk of this court to file the opening brief provisionally received on November 29, 2005. We have considered all other proper person documents received from appellant and to the extent that he requests any relief, we deny his requests.

contents. Although the district court considered the record and the totality of the facts and circumstances of the case when making its determination that it was not in the child's best interest to have visitation with appellant, that decision was based in part on the counselor's report. Appellant was not given notice of the counselor's interview and ensuing report.² Accordingly, we reverse the order denying appellant's motion to modify the divorce decree and remand this matter to the district court with instructions that the district court provide appellant with a copy of the report, redacting any personal information to maintain the safety of respondent and the child, such as their whereabouts, and that the court allow appellant an opportunity to respond to the report's contents before rendering its custody determination.

It is so ORDERED.

 _____, J.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

²See Wiese v. Granata, 110 Nev. 1410, 1412, 887 P.2d 744, 745 (1994) (stating that "due process requires that notice be given before a party's substantial rights are affected").

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Lawrence E. Schwiger
Lisa N. Schwiger
Clark County Clerk