

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
RANDALL PACE AND CHASTITY
HOLDREN A/K/A CHASTITY PACE,
Respondents.

No. 46877

FILED

SEP 07 2006

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

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court granting respondents' motion to dismiss. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

After a preliminary hearing in the justice court, respondent Randall Pace was bound over to the district court and charged with two counts of removal of a child from a person having lawful custody or from the jurisdiction of the court.¹ Respondent Chastity Holdren was bound over to the district court and charged with two counts of aiding and abetting Pace.² On September 22, 2005, respondents filed a motion to dismiss the charges in the district court. The State opposed the motion. The district court conducted a hearing, and on February 2, 2006, entered an order granting respondents' motion and dismissing the charges based on arguments not raised in respondents' motion. In its order granting the motion, the district court found that (1) the Superior Court of California order granting the biological mother primary physical custody was invalid;

¹See NRS 200.359(1).

²See NRS 200.359(7); NRS 195.020.

and (2) the State “achieved its purpose in returning the children . . . to the custody of the biological mother.” This timely appeal followed.

We conclude that the district court erred in granting respondents’ motion. Even assuming the district court was correct in finding that the California custody order was invalid, pursuant to Nevada state law, the biological mother had primary physical custody of Pace’s two children.³ In a hearing conducted on August 18, 2005, more than one month before the filing of respondents’ motion to dismiss, the district court orally granted the State’s motion to file a third amended criminal information, thereby providing notice to the defense that the State would be proceeding under a theory that the biological mother had primary physical custody of the children under NRS 126.031(2)(a) when Pace and Holdren violated NRS 200.359. Although the State raised this argument in the hearing on the motion, the district court did not address it. Further, the district court did not address NRS 126.031(2) in its order granting respondents’ motion. In fact, in granting respondents’ motion, the district court order offered no relevant authority or law in support of its determination. Under these circumstances, we conclude that the district court abused its discretion. Accordingly, we


³NRS 126.031(2)(a) provides, in part:

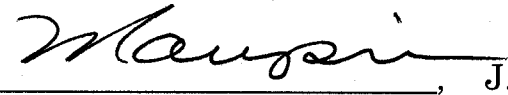
[T]he mother of a child born out of wedlock has primary physical custody of the child if:

(1) The mother has not married the father of the child; and

(2) A judgment or order of a court, or a judgment or order entered pursuant to an expedited process, determining the paternity of the child has not been entered.

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Attorney General George Chanos/Las Vegas
Amesbury & Schutt
Clark County Clerk