

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULI RAE WACHSMUTH, N/K/A JULI
FISK,
Appellant,
vs.
JOHN WACHSMUTH,
Respondent.

No. 49105

FILED

SEP 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *JMB*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order modifying a child custody arrangement. Fifth Judicial District Court, Mineral County; John P. Davis, Judge.

Appellant Juli Rae Wachsmuth and respondent John Wachsmuth were granted a divorce in January 2006. Under the divorce decree, the parties shared joint legal and physical custody of their two minor children. The custody arrangement allowed for the children to alternate weekly between the parents' homes.

In January 2007, proceeding in proper person, John moved the district court for primary physical custody of the children. In his motion, John contended, among other things, that (1) Juli had moved from Hawthorne to Fernley, which interfered with the custody arrangement under the divorce decree; (2) Juli had lost her job; and (3) Juli had been arrested for driving under the influence, battery with a deadly weapon, battery on a police officer, and domestic violence involving her live-in boyfriend. Juli, also in proper person, opposed John's motion. In her opposition, Juli countered that John was unemployed for a time and that

he had moved from the Hawthorne area and did not regularly visit the children. Juli did not specifically address John's allegations concerning her arrest, but she did insist that he had slandered her.

Without conducting a hearing, the district court entered a summary order granting John's motion and awarding Juli visitation with the children. More specifically, the district court's order provided that John was a "fit and proper person to be awarded primary physical custody" of the children. Through counsel, Juli appeals.

Child custody matters rest in the district court's sound discretion.¹ Any order for joint physical custody may be modified by the district court if the child's best interest requires the modification.² In its decision to modify a joint custody arrangement, the district court must state the reasons for the modification.³ In addition, "[i]t is presumed that a trial court has properly exercised its discretion in determining a child's best interest."⁴

Here, the district court, without explanation, entered a summary order changing the joint child custody arrangement. This court has observed that "[l]itigants in a custody battle have the right to a full

¹Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996).

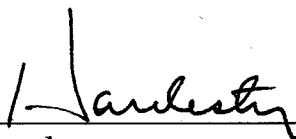
²NRS 125.510(2); see also Traux v. Traux, 110 Nev. 437, 874 P.2d 10 (1994) (concluding that only the child's best interest need be considered by the district court in situations involving joint physical custody).


³NRS 125.510(2).

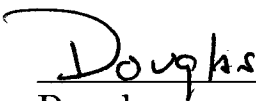
⁴Wallace, 112 Nev. at 1019, 922 P.2d at 543.

and fair hearing concerning the ultimate disposition of a child.”⁵ And when a parent stands to lose custody of a child, the parent “must be given the opportunity to disprove the evidence presented.”⁶ Accordingly, since the district court failed to both conduct a hearing to consider the evidence regarding the parties’ allegations and state its reasons for the modification, we are compelled to reverse the district court’s order modifying the child custody arrangement. We remand this matter to the district court for further proceedings.

It is so ORDERED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. John P. Davis, District Judge
Jennifer S. Anderson
William F. Heckman
John Wachsmuth
Mineral County Clerk

⁵Moser v. Moser, 108 Nev. 572, 576, 836 P.2d 63, 66 (1992).

⁶Id. at 577, 836 P.2d at 66.

⁷Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.